

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

Ammonium Nitrate and Regulated Ammonium Nitrate Materials

I.D. No. AAM-48-05-00003-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of emergency rule making, I.D. No. AAM-48-05-00003-E, printed in the *State Register* on November 30, 2005.

Regulatory Impact Statement

1. Statutory authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and the performance of the duties of the Department.

Section 146-f of the Agriculture and Markets Law provides that the Commissioner, in consultation with or upon the recommendation of, the Director of Homeland Security, may: set forth criteria for the registration of sellers of ammonium nitrate; suggest security measures; specify picture identification cards for purchaser identification; set forth additional

records that must be maintained; and determine what regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

Section “3” of Chapter 620 of the Laws of 2005, by which Agriculture and Markets Law section 146-f was enacted, provides that any rules and regulations necessary to implement the provisions of the Act on its effective date are authorized and directed to be promulgated on or before such effective date.

2. Legislative objectives:

The rule accords with the public policy objectives the Legislature sought to advance by enacting the above statutory authority in that it was developed in consultation with the State Office of Homeland Security and: sets forth criteria for the registration of sellers of ammonium nitrate; suggests security measures; specifies picture identification cards for purchaser identification; sets forth additional records that must be maintained; and determines what regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

3. Needs and benefits:

This emergency rule is necessary for the preservation of the public health, public safety and general welfare because it implements Chapter 620 of the Laws of 2005, effective November 28, 2005 which requires the registration of persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials. Ammonium nitrate is a common chemical compound used in fertilizer, but which is also an explosive chemical used to make bombs such as those used in the 1993 World Trade Center and 1995 Oklahoma City bombings.

This rule, which has been developed in consultation with the State Office of Homeland Security, establishes the form for registering as a seller of ammonium nitrate and regulated ammonium nitrate materials, as defined in the rule. It also establishes the security measures that must be taken by those required to register and the format for making and maintaining records of the sale of ammonium nitrate and regulated ammonium nitrate materials.

It is imperative that the requirements of Chapter 620 of the Laws of 2005 for the registration, security measures and recordkeeping be implemented immediately. The adoption of this emergency rule will make this possible.

4. Costs:

(a) Costs to regulated parties:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The costs to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format for the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification

on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005.

It is anticipated that the cost of the security measures that must be taken by those required to be registered will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. Daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal and to already be part of the business management practices of most sellers.

(b) Cost to the agency, state and local governments:

There will be no costs to local government or to the State, other than the cost to the Department. The cost to the Department, in addition to processing the registration forms and inspecting sellers for compliance with the recordkeeping and security measure requirements will depend upon the number of sellers required to be registered pursuant to Chapter 620 of the Laws of 2005. That number is currently unknown.

(c) Source:

Costs are based upon the Department's experience with similar registration and inspection programs.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The rule establishes the form for persons who sell, offer for sale, or otherwise make available ammonium nitrate or regulated ammonium nitrate materials to use to register annually with the Department as required by Chapter 620 of the Laws of 2005.

The rule also establishes the format for the record of the sale of ammonium nitrate and regulated ammonium nitrate materials sellers are required to make and maintain for two years pursuant to Chapter 620 of the Laws of 2005.

7. Duplication:

The rule does not duplicate, overlap or conflict with any other rule or other legal requirements of the State and federal governments.

8. Alternatives:

The only alternative considered was to not establish the registration form and sales record format by regulation. That alternative was rejected in favor of establishing them by this rule so that the form could be formally adopted, published in the *State Register* and codified in 1 NYCRR. The remainder of the rule relates to security measures, types of identification cards, additional records and what type of regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content. These requirements were developed in consultation with the State Office of Homeland Security and were based on best practices in the industry and consultation with federal agencies knowledgeable about explosive materials.

9. Federal standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

The rule establishes a form for immediate use by those who sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials to register with the Department, as required by Chapter 620 of the Laws of 2005.

It also establishes the format for the record of the sale of ammonium nitrate and regulated ammonium nitrate materials.

It is anticipated that sellers of these materials will be able to immediately register and begin making and maintaining records of sale. The Department has made mailings advising fertilizer dealers of the requirements of Chapter 620 of the Laws of 2005. Some of these dealers may sell ammonium nitrate and regulated ammonium nitrate materials. The majority of these sales will take place during the next growing season. It is also anticipated that sellers of these materials will be able to implement security measures to protect the inventories of ammonium nitrate they will acquire prior to the next growing season.

Regulatory Flexibility Analysis

1. Effect of rule:

There are 9 persons or entities in New York State known to sell ammonium nitrate, the majority of which are small businesses. Since such

sellers are not currently subject to registration, the actual number of small businesses that sell ammonium nitrate is not known.

2. Compliance requirements:

Persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials are required by Chapter 620 of the Laws of 2005 to register annually with the Department for a fee of not more than \$50.00. Said Chapter also requires such persons and entities to make and maintain, for a minimum of two years, a record of those purchasing ammonium nitrate. This rule establishes the form and format for such registration and record-keeping. In addition, the rule requires that those selling ammonium nitrate display their registration certificate and take security measures to provide reasonable protection against vandalism, theft or other unauthorized access. They are also required to provide officers and employees of the New York State Department of Agriculture and Markets and the New York State Office of Homeland Security with access to the records of ammonium nitrate sales.

3. Professional services:

None.

4. Compliance costs:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The costs to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format for the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005.

It is anticipated that the cost of the security measures that must be taken by those required to register will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. The cost of daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal and to already be part of the business management practices of most sellers.

5. Economic and technological feasibility:

Compliance with the rule is both economically and technologically feasible for the small businesses who sell, offer for sale, or otherwise make available ammonium nitrate materials. As discussed in "4" above, the registration and sale forms have been designed for ease of use by sellers of ammonium nitrate. The security measure that are required are similar to those that are anticipated to already be a part of the business management practices of most sellers.

6. Minimizing adverse impact:

The rule is designed to minimize any adverse economic impact the rule may have on small businesses by closely following the requirements of Chapter 286 of the Laws of 2005 establishing registration forms that are designed for ease of use by sellers of ammonium nitrate. The registration form is similar to the form currently used in the licensing of commercial fertilizer dealers. The sales record form is designed for ease of use in the course of sales transactions involving ammonium nitrate. The approaches for minimizing adverse impact suggest in SAPA § 202b(1) and other similar approaches were considered.

7. Small business and local government participation:

The Department has conducted outreach via mailings to the approximately 300 licensed commercial fertilizer distributors in New York State to advise them of Chapter 620 of the Laws of 2005 and of the fact that regulations would be proposed pursuant to that Chapter. The Department has also followed up by telephone with those known to handle ammonium nitrate. When the emergency rule is proposed for permanent adoption

small businesses and other regulated parties will have an opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers in rural areas:

The 9 persons or entities in New York State known to sell ammonium nitrate are located throughout the rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements and professional services:

Persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials that are small businesses are not likely to need professional services to comply with the rule. The rule establishes the form to use to register with the Department as required by Chapter 620 of the Laws of 2005. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The rule also establishes the format for the record of the sale of ammonium nitrate and ammonium nitrate materials required by Chapter 620 of the Laws of 2005. The format for this record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by such sellers. By listing the permissible type of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005 that the identity of those purchasing ammonium nitrate and regulated ammonium nitrate materials be verified and recorded.

The requirements in the rule requiring security measures be taken to provide reasonable protection against vandalism, theft or other unauthorized access are those commonly in use by small businesses to protect their inventory.

It is not anticipated that professional services are likely to be needed in a rural area to comply with the proposed rule.

3. Costs:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. These licenses, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee. It is not anticipated there will be a variation in the cost for different types of public and private entities in rural areas.

The cost to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format of the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005. It is not anticipated that there will be a variation in such costs for different types of public and private entities in rural areas.

It is anticipated that the cost of the security measures that must be taken by those required to register will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. Daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal and to already be part of the business management practices of most sellers.

4. Minimizing adverse impact:

As set forth in "2" and "3" above, the rule is designed to minimize any adverse impact on rural areas, by making the forms established by the rule user friendly and directed and limited to that which is necessary to implement Chapter 620 of the Laws of 2005. The approaches suggested by SAPA § 202-bb(2) and other similar approaches were considered.

5. Rural area participation:

The Department has conducted an outreach by mail to 300 licensed fertilizer dealers trying to determine those that sell ammonium nitrate. The Department will be proposing this emergency rule for permanent adoption. Through the notice and comment process of the Administrative Procedure Act, regulated parties will have the opportunity to participate in the rule making process. The adoption of the rule on an emergency basis was necessary to implement Chapter 620 of the Laws of 2005 by the effective date of November 28, 2005.

Job Impact Statement

1. Nature of impact:

By providing for the protection of ammonium nitrate, while permitting its continued use as a fertilizer for agricultural and horticultural purposes, the rule will help preserve jobs and employment opportunities in those important economic sectors.

2. Categories and numbers affected:

The number of persons employed by the 9 known sellers of ammonium nitrate is not known.

3. Regions of adverse impact:

The sellers of ammonium nitrate and the agricultural and horticultural businesses that utilize ammonium nitrate as a fertilizer are located in the rural areas of the State. As noted in "1" above, the rule would have a positive impact on jobs and employment opportunities.

4. Minimizing adverse impact:

The rule was designed to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities in that it will help keep fertilizer dealers that sell ammonium nitrate and their agricultural and horticultural customers in business. The rule was designed to minimize any adverse impact on sellers and customers by making the forms established by the rule easy to use and by limiting the rule to that which is necessary to implement Chapter 620 of the Laws of 2005.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Accounting, Reporting, and Supervision Requirements for Public Authorities

I.D. No. AAC-49-05-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Part 201 of Title 2 NYCRR.

Statutory authority: New York State Constitution, art. 10, section 5; Public Authorities Law, art. 9 (sections 2800 to 2985); State Finance Law, section 8, subdivision 14

Subject: Accounting, reporting, and supervision requirements for public authorities.

Purpose: To add definitions identifying the public authorities required to report to the Office of the State Comptroller, set forth the standards to be addressed in investment guidelines to be adopted by public authorities, and make technical and conforming amendments.

Substance of proposed rule (Full text is posted at the following State website: www.osc.state.ny.us): Section 201.1 is amended to clarify the purpose and scope of the regulations by adding definitions of the covered public authorities, including a listing by name of regulated public authorities.

Section 201.2 is amended to update the reporting and auditing standards applicable to public authorities, making clear that public authorities are subject to the accounting and auditing standards generally accepted in the United States of America, as promulgated by the Comptroller General of the United States.

Section 201.3 is amended to add investment guidelines, based on Public Authorities Law section 2925, that form the basis for more specific guidelines that must be adopted and followed by public authorities. Among the standards that must be addressed by the investment guidelines are:

prudent basic operating procedures designed to meet a public authority's investment objectives; safety and security of a public authority's assets; a system of internal controls for a public authority's investments; and accurate reporting and evaluation of a public authority's investment results in accordance with generally accepted accounting principles.

Section 201.4 is amended to make technical corrections and add a provision for waivers of the requirements of Part 201 to be requested from, and granted by, the Office of the State Comptroller unless the requirement is imposed by law.

Text of proposed rule and any required statements and analyses may be obtained from: William J. Murray, Associate Counsel, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-9024, e-mail: bmurray@osc.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

State Finance Law § 8(14) authorizes the Comptroller to make, amend and repeal rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Section 5 of Article 10 of the New York State Constitution provides that the accounts of certain public corporations created by special act of the Legislature shall be subject to the supervision of the State Comptroller. The Court of Appeals has held that this direct grant of constitutional authority to the Comptroller is not subject to control by the Legislature and that the authority to supervise the accounts of public corporations is to be exercised in the discretion of the Comptroller, guided by his personal responsibility and commitment to his oath of office. Part 201 of the Comptroller's regulations is intended to exercise that supervisory authority by specifying the requirements for reports by public authorities to the Comptroller (which include, but are not limited to, the reporting requirements set forth in Article 9 of the Public Authorities Law) and setting forth the standards to be addressed in the investment guidelines to be adopted by public authorities. These amendments (i) specifically define the public authorities subject to the reporting requirements, including a list of public authorities by name, (ii) add an updated set of investment guideline standards that has been revised to conform to current accounting and auditing standards, and (iii) make technical and conforming changes.

2. Legislative Objectives:

These amendments clarify the reporting requirements and investment guideline standards, thereby furthering the constitutional and legislative objectives of assuring that public authorities conduct their affairs in a transparent manner that protects the public interest on a prudent and responsible fiscal basis.

3. Needs and Benefits:

Prescribed reporting requirements and investment guideline standards establish definitive standards to be followed by public authorities. When public authorities consistently follow these standards, it is possible for the public and for public officials to review and analyze the actions of public authorities, which makes public authorities more responsive and responsible to the public.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule are expected to be negligible, since public authorities are already required by law to report to the Comptroller, to adopt investment guidelines and to manage their accounts in compliance with the Comptroller's supervisory requirements. These amendments are not expected to substantially increase the costs of compliance for any public authorities.

b. Costs to the agency, the State and local governments for the implementation and continuation of the rule are also expected to be negligible, since the amendments are, in most cases, only refinements of existing legal requirements. Compliance with the amendments will make public authorities more accountable to the public, which should enable public authorities to operate more efficiently and effectively and thereby reduce, rather than increase, their costs.

c. The basis for the foregoing cost estimates is the experience of the Office of the State Comptroller in supervising the accounts of public authorities over the course of many years, as well as similar supervisory experience relating to the State and local governments.

5. Local Government Mandates:

The amendments impose no requirements on any local governments.

6. Paperwork:

No new paperwork or reporting requirements are imposed by these amendments. The amendments provide standards to be followed in complying with requirements already created by law.

7. Duplication:

Part 201 generally parallels the accounting, reporting and supervision requirements set forth in Article 9 of the Public Authorities Law. Since these amendments are designed to incorporate and conform the requirements of Part 201 to national accounting and auditing standards, it is expected that complying with the Comptroller's regulations will enable public authorities to eliminate any inconsistent reporting and accounting practices. To the extent that any portion of the proposed amendments may be interpreted as inconsistent with a statutory provision applicable to any of the authorities covered by the rule, the Comptroller's direct grant of constitutional power provides the necessary legal authority for the rule.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

As noted above (see "Duplication"), the amendments are designed to conform with national auditing standards. Those standards are adopted by a federal officer, the Comptroller General of the United States. Therefore, the amendments are not expected to create any inconsistencies between federal and State standards.

10. Compliance Schedule:

Public authorities should be able to comply within the current fiscal year.

Regulatory Flexibility Analysis

These amendments are applicable only to public authorities. No provision of the regulations applies to a small business or a local government. Therefore, no adverse economic impacts, reporting, recordkeeping, or other compliance requirements will be imposed by the amendments on any small business or local government.

Rural Area Flexibility Analysis

These amendments will not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements, or necessitate any professional services in rural areas. Some of the public authorities subject to these amendments have operations in rural areas; however, the amendments are not expected to have an adverse impact on any of those rural areas. Based on the experience of the Office of the State Comptroller in supervising and auditing the accounts of public authorities, the Office concludes that these amendments will not impose any adverse impacts on rural areas or reporting, recordkeeping, or other compliance requirements in the rural communities served by these agencies, or impose reporting, recordkeeping and other compliance requirements on rural local governments.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Accounting and Reporting Requirements

I.D. No. AAC-49-05-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Addition of Part 204 to Title 2 NYCRR.

Statutory authority: New York State Constitution, art. section 5; State Finance Law, section 8, subdivisions 9 and 14

Subject: Accounting and reporting requirements for public authorities that issue State-supported debt.

Purpose: To specify the accounting and reporting requirements for public authorities that issue State-supported debt to ensure the ability of the Comptroller to timely file with the Legislature, the report specified in State Finance Law, section 8, subdivision 9.

Substance of proposed rule (Full text is posted at the following State website: www.osc.state.ny.us): Part 204 specifies filing requirements with respect to accounting for and reporting of debt by public authorities that issue State-supported debt. These regulations, which specify what documents and information need to be submitted to the Comptroller, and the deadlines for submission, are being proposed to ensure the ability of the Comptroller to file the report specified in State Finance Law, section 8, subdivision 9 within 120 days after the close of the fiscal year to which such report pertains, as required under such law.

Section 204.1 sets forth the purpose and scope of the proposed regulations.

Section 204.2 describes which public authorities are subject to the proposed regulations.

Section 204.3 contains definitions of terms used in the proposed regulations.

Section 204.4 specifies the information required to be submitted after the issuance of debt described in the proposed regulations.

Section 204.5 specifies the information required to be submitted after the end of each State fiscal year quarter by issuers of debt described in the proposed regulations.

Section 204.6 specifies the information required to be submitted after the end of each State fiscal year by issuers of debt described in the proposed regulations.

Section 204.7 specifies requirements applicable to submission of all information and other general provisions relating to the proposed regulations.

Text of proposed rule and any required statements and analyses may be obtained from: William J. Murray, Associate Counsel, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-9024, e-mail: bmurray@osc.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

State Finance Law § 8(14) authorizes the Comptroller to make, amend and repeal rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Article 10, § 5 of the State Constitution provides that the accounts of certain public corporations created by special act of the Legislature shall be subject to the supervision of the State Comptroller. The Court of Appeals has held that this direct grant of constitutional authority to the Comptroller is not subject to control by the Legislature and that the authority to supervise the accounts of public corporations is to be exercised in the discretion of the Comptroller, guided by his personal responsibility and commitment to his oath of office. Part 204 of the Comptroller's regulations is intended to exercise that supervisory authority by specifying the requirements for accounting and reporting by public authorities that issue State-supported debt (which include, but are not limited to, the reporting requirements set forth in Article 9 of the Public Authorities Law).

Section 204 specifies filing requirements with respect to accounting for and reporting of debt by authorities issuing State-supported debt. These regulations, which specify what documents and information must be submitted and the deadlines for submission, are being proposed to ensure the ability of the Comptroller to timely file with the Legislature the financial reports required by State Finance Law, section 8, subdivision 9. That statute requires that the reports shall be filed within 120 days after the close of the fiscal year to which they pertain.

2. Legislative Objectives:

These regulations clarify the accounting and reporting requirements for public authorities, thereby furthering the constitutional and legislative objectives of assuring that public authorities conduct their affairs in a transparent manner. These regulations also further the objective that the Comptroller makes his statutorily prescribed report on public authority and State fiscal matters to the Legislature on a timely basis.

3. Needs and Benefits:

Prescribed accounting and reporting requirements establish definitive standards to be followed by public authorities. When public authorities consistently follow these standards, it ensures that the Comptroller will be able to submit the report the Comptroller is required to provide to the Legislature within the filing deadline prescribed by statute, and that such report will be as accurate and comprehensive as possible. This, in turn, will make it possible for the public and for public officials to review and analyze the financial operations and status of public authorities, which makes public authorities more responsive and responsible to the public.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule are expected to be negligible, since public authorities are already required by law to report to the Comptroller and to manage their accounts in compliance with the Comptroller's supervisory requirements. These amendments are not expected to substantially increase the costs of compliance for any public authorities.

b. Costs to the agency, the State and local governments for the implementation and continuation of the rule are also expected to be negligible, since the amendments are refinements of existing reporting requirements. Compliance with the amendments will make public authorities more accountable to the public, which should enable public authorities to operate

more efficiently and effectively and thereby reduce, rather than increase, their costs.

c. The basis for the foregoing cost estimates is the experience of the Office of the State Comptroller in supervising the accounts of public authorities over the course of many years, as well as similar supervisory experience relating to the State and local governments.

5. Local Government Mandates:

The amendments impose no requirements on any local governments.

6. Paperwork:

No new paperwork or reporting requirements are imposed by these amendments. The amendments provide standards to be followed in complying with reporting requirements already created by law.

7. Duplication:

These amendments do not duplicate any existing federal or State requirements. Since the standards set forth in the amendments are designed to incorporate and conform to national accounting and auditing standards, it is expected that complying with the Comptroller's regulations will assist public authorities in eliminating any inconsistent reporting and accounting practices.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

As noted above (see "Duplication"), the amendments are designed to conform to national accounting and auditing standards. Those standards are adopted by a federal officer, the Comptroller General of the United States. Therefore, the amendments are not expected to create any inconsistencies between federal and State standards.

10. Compliance Schedule:

Public authorities should be able to comply within the current fiscal year.

Regulatory Flexibility Analysis

These proposed regulations are applicable only to public authorities. No provision of the proposed regulations applies to a small business or a local government. Therefore, no adverse economic impacts, reporting, record-keeping, or other compliance requirements will be imposed by the proposed regulations on any small business or local government.

Rural Area Flexibility Analysis

This rule will not impose any adverse economic impact, reporting, record-keeping or other compliance requirements, or necessitate any professional services in rural areas. Some of the public authorities listed in this Part have substantial operations in rural areas; however, the proposed regulation is not expected to adversely impact these areas. The proposed rule establishes minimum standards of financial reporting and presentation. The proposed rule is not expected to increase the need for professional services in the rural communities served by these agencies, or impose reporting, recordkeeping and other compliance requirements on rural local governments.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Annual Budgets and Financial Plans

I.D. No. AAC-49-05-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Addition of Part 203 to Title 2 NYCRR.

Statutory authority: New York State Constitution, art. 10, section 5; State Finance Law, section 8, subdivision 14

Subject: Submission and format of, the preparation of supporting documentation for, and the monitoring of annual budgets and financial plans for certain public authorities.

Purpose: To prescribe specific, uniform requirements for the submission and format of the budgets and financial plans of certain public authorities, the documentation to be prepared and made available with the release of the budgets and plans and periodic monitoring and reporting required during each fiscal year in connection with the budgets and plans.

Substance of proposed rule (Full text is posted at the following State website: www.osc.state.ny.us): Section 203.1 states the purpose of Part 203, which is to set forth specific requirements in connection with the submission and format of, the preparation of supporting documentation for, and the monitoring of annual budgets and financial plans of the public authorities listed on Part 203 ("covered public authorities"), as well as their affiliates and subsidiaries. It also states that all the requirements of Part 203

will apply immediately upon the effective date of Part 203, except as otherwise consented to by the State Comptroller, upon good cause shown.

Section 203.2 provides for the applicability of Part 203 to all covered public authorities, unless a waiver is granted by the State Comptroller, upon good cause shown. The Metropolitan Transportation Authority ("MTA") will continue to be governed by 2 NYCRR Part 202, and certain provisions of Part 203 will also apply to the MTA.

Section 203.3 contains definitions of the terms "Affiliate," "Board," "Budget," "Chief financial officer," "Chief operating officer," "Debt," "Financial plan," "Gap," "Gap-closing program" and "Subsidiary" for purposes of Part 203.

Section 203.4 provides that covered public authorities shall prepare annual budgets and financial plans in accordance with Part 203. It also provides that budgets and financial plans be approved by the board and contains provisions for making budgets and financial plans made available for public inspection.

Section 203.5 provides for the format of budgets and financial plans of covered public authorities. It provides that budgets and financial plans, generally: be prepared in accordance with accounting principles generally accepted in the United States of America; be based on reasonable assumptions and methods of estimation; be organized in a manner consistent with the public authority's programmatic and functional activities; include estimates of personal service expenses, personal service contracts, non-personal service operating expenses and projected debt service; and include a corresponding cash budget and financial plan.

Section 203.6 provides that each budget and financial plan must be accompanied by various statements and other information including: a description of the principal budget assumptions; a self-assessment of budgetary risks; a revised forecast of the current year's budget; a reconciliation identifying changes in estimates from the previously approved budget or plan; a statement of the prior year's actual financial performance; a projection of the number of employees; a statement of each revenue-enhancement and cost-reduction initiative representing a component of any gap-closing programs; a statement of the source and amount of any material non-recurring resource that is planned for use; a statement of any transactions that shift material resources from one year to another and the amount of any reserves; a statement of borrowed debt projected to be outstanding, the planned use or purposes of debt issuances, scheduled debt service payments, the principal amount of proposed debt and assumed interest rates, debt service as a percentage of total pledged revenues and the amount of debt that can be issued within legal limits; and a breakdown of annual projected capital costs.

Section 203.7 provides for the preparation of working papers, completed contemporaneously with the release of the budget or plan, including a statement supporting the reasonableness of each estimate and the underlying information on which the estimate is based.

Section 203.8 provides reporting requirements. The chief financial officer of the covered public authority must provide to the board a mid-year update, explaining and quantifying certain material variances and including the status of capital projects. The chief financial officer also must report publicly no later than 90 days after the close of the fiscal year on actual versus budgeted results, and inform the State Comptroller in writing at any point during the fiscal year of the potential financial impact of any adverse development that would materially affect the budget or financial plan.

Section 203.9 provides that a certification of the chief operating officer must be attached to each budget and financial plan.

Section 203.10 lists the covered public authorities.

Text of proposed rule and any required statements and analyses may be obtained from: William J. Murray, Associate Counsel, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-9024, e-mail: bmurray@osc.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

State Finance Law § 8(14) authorizes the Comptroller to make, amend and repeal rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Article 10, § 5 of the State Constitution provides that the accounts of certain public corporations created by special act of the Legislature shall be subject to the supervision of the State Comptroller. The Court of Appeals has held that this direct grant of constitutional authority to the Comptroller is not subject to control by the Legislature and that the authority to supervise the accounts of public

corporations is to be exercised in the discretion of the Comptroller, guided by his personal responsibility and commitment to his oath of office.

2. Legislative Objectives:

The proposed rule will represent an exercise of the Comptroller's discretionary authority to supervise the accounts of certain public corporations by prescribing requirements for certain public authorities and their affiliates and subsidiaries: (a) a clear and open process for the submission, presentation and format of budgets and financial plans, (b) the preparation of supporting documents underlying budget and financial plan assumptions and methods of estimation, and (3) the ongoing review and oversight of financial condition by the monitoring of and reporting on the status of the budget and financial plans during the fiscal year.

3. Needs and Benefits:

A series of reports by the State Comptroller on the finances of the Metropolitan Transportation Authority, the Long Island Power Authority and other public authorities, has identified considerable deficiencies in the reporting, presentation and documentation of budget and financial plan information by a number of public authorities. More generally, there is a lack of consistent and effective budget and financial plan procedures prescribed for public authorities listed in this Part. The proposed rule establishes minimum standards for the public authorities listed in this Part to facilitate an open budget and financial planning process. The improved format, documentation, monitoring and reporting requirements in, and the uniformity provided by, this proposed regulation, will benefit taxpayers and public officials by improving transparency and by ensuring that appropriate budget and financial plan information is provided.

4. Costs:

a. The costs to the regulated parties associated with the implementation of and continuing compliance with the rule are expected to be negligible. The proposed rule establishes minimum standards of financial reporting and presentation of budgets and financial plans to the public. The budgetary and financial information required by the proposed rule is basic information that the public authorities listed in this Part may already be collecting in connection with existing statutory reporting requirements. While some public authorities may have to modify their budgets and financial plans to bring them into compliance with the proposed rule, the costs associated with these modifications are expected to be minimal, and furthermore, once the budget and financial plan systems have been modified, no additional costs are expected to result from the continuing compliance with the proposed rule. Compliance with the amendments will make public authorities more accountable to the public, which should enable public authorities to operate more efficiently and effectively and thereby ultimately reduce, rather than increase, their costs.

b. Costs to the agency for the implementation and continuation of the rule are also expected to be negligible. While the Comptroller receives certain documents and other information from the public authorities under the proposed regulation, the receipt of these materials is consistent with the Comptroller's present monitorship of the public authorities. There should be no additional costs to other State agencies or to local governments, which do not have additional powers or duties under the proposed rule.

c. The basis for the foregoing cost estimates is the experience of the Office of the State Comptroller in supervising the accounts of public authorities over the course of many years, as well as similar supervisory experience relating to the State and local governments.

5. Local Government Mandates:

The rule will apply only to listed public authorities, and will not apply to any local governments.

6. Paperwork:

The proposed rule would require reporting on budget and financial plan progress during each fiscal year by the public authorities covered by this rule. It would also require the preparation of supporting documentation with the budget and financial plan. Both paperwork requirements are needed to ensure full, open and clear disclosure of the budget and plan information for the benefit of taxpayers and public officials.

7. Duplication:

Public Authorities Law § 2801 contains a requirement for annual reporting to the Governor and the State Legislature of certain budget information by public authorities. Transportation Law § 17-a similarly requires regional transportation authorities to submit annually to the Governor and the State Legislature information on operations and capital construction, setting forth estimated receipts and expenditures for its next fiscal year and its current fiscal year. Some of the information contained in these reports may be helpful in facilitating compliance with the proposed rule. There are, however, no comprehensive requirements for the submission, format and presentation of, or reporting on, budgets and financial plans, similar to

those in the proposed rule. The Metropolitan Transportation Authority and its agencies will continue to be governed by Part 202 of the Comptroller's Regulation and will be governed only by certain portions of the proposed rules, none of which duplicate the provisions of the proposed rules. To the extent that any portion of the proposed rule may be interpreted as inconsistent with a statutory provision applicable to any of the authorities covered by the rule, the Comptroller's direct grant of constitutional power provides the necessary legal authority for the rule.

8. Alternatives:

None.

9. Federal Standards:

None.

10. Compliance Schedule:

This rule will be effective upon adoption and filing. All requirements will apply to the public authorities listed in this Part immediately upon the effective date, except as otherwise consented to by the Comptroller at the request of individual public authorities upon good cause shown. It is expected that most of the budget and financial plan monitoring provisions of the regulation can be complied with beginning immediately upon the effective date. Provisions with respect to the preparation of budgets and plans will be applicable beginning with the budget and plan for the fiscal year of the public authority next commencing after the effective date of the regulation.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposed rule will not impose any reporting, recordkeeping or compliance requirements on small businesses or local governments, or require local governments or small businesses to undertake any other acts. Rather, the proposed rule relates solely to budgets and financial plans of certain public authorities.

Rural Area Flexibility Analysis

This action will not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements, or necessitate any professional services in rural areas. Some of the public authorities listed in this Part have substantial operations in rural areas; however, the proposed regulation is not expected to adversely impact these areas. The proposed regulation establishes minimum standards of financial reporting and presentation. The proposed rule is not expected to increase the need for professional services in the rural communities served by these agencies, or impose reporting, recordkeeping and other compliance requirements on rural local governments.

for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing," in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is necessary in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under Article 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors' funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to Section 580(4) of the Banking Law in an amount sufficient to cover the debtors funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors' funds that it has access to or controls, as a result of its "outsourcing" activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors' funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The rule also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of Chapter 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this rule is necessary and appropriate.

Subject: Regulation of budget planning activities conducted by entities licensed under Banking Law, art. 12-C.

Purpose: To set forth regulatory requirements for budget planning when licensees use the services of third party entities in making payments of debtor funds to creditors of the debtors.

Text of emergency rule: PART 404

BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

§ 404.1 Definitions.

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individ-

Banking Department

**EMERGENCY
RULE MAKING**

Budget Planning Activities

I.D. No. BNK-49-05-00013-E

Filing No. 1373

Filing date: Nov. 18, 2005

Effective date: Nov. 21, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 404 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Chapter 629 of the Laws of 2002, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this state. Amendments made to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants

ual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

§ 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of

Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404.3(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on

deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

§ 404.6 Compliance.

Compliance with this Part shall be required on or before May 18, 2004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 15, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of per-

sons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

3. Needs and Benefits:

Proposed New Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors,

raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

4. Costs:

(a) Costs to State Government: None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule:

The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

7. Duplication: None.

8. Alternatives:

(a) Proposal — As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors.

Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law. This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before May 18, 2004.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York’s Not-For-Profit Corporation Law. Under New York’s Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the debtors in contract with the licensees for budget planning services. The rule ensures that debtors’ funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensees business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accord-

ingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York’s General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensees business that it services.

Accordingly, based on the rule’s requirements, it will have no impact on jobs in New York State.

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-49-05-00014-E

Filing No. 1375

Filing date: Nov. 18, 2005

Effective date: Nov. 18, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410, and 410-x(4)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of children in need of subsidized child care services in this State. Section 410-x(4) of the Social Services Law

requires that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2003 and reflect rate data collected in 2003. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the significantly escalating costs of providing child care services. Social services districts have experienced difficulty in recruiting and retaining providers to care for subsidized children because the actual costs of providing child care are greater than the current market rates.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assistance, to the detriment of the public welfare system. Therefore, it is necessary to adopt these regulations on an emergency basis.

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text of emergency rule: Section 415.9(f) is amended to read as follows:

Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. *However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.*

Section 415.9(j) is amended to read as follows:

Effective October 1, [2003] 2005, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week. The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

Group A: Nassau, Putnam, Rockland, Suffolk, Westchester

Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group D: Albany, Dutchess, Orange, Ulster

Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$300	\$265	\$240	\$250
Exceptions:				
Nassau	--	--	\$248	\$261

Westchester	\$338	\$317	\$271	--
DAILY	\$70	\$60	\$55	\$54
Exceptions:				
Westchester	\$75	\$70	\$58	--
PART-DAY	\$47	\$40	\$36	\$36
Exceptions:				
Westchester	\$50	\$47	\$39	--
HOURLY	\$8.88	\$8.75	\$8.81	\$8.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$225	\$225	\$225
Exceptions:				
Westchester	--	\$246	--	--
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.00	\$7.50	\$7.50

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$250	\$243	\$240
Exceptions:				
Rockland	--	--	\$250	\$250
Westchester	--	--	--	\$250
DAILY	\$58	\$56	\$55	\$56
PART-DAY	\$39	\$37	\$37	\$37
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$250
Exceptions:				
Nassau	--	--	--	\$261
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$8.75

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$158	\$158	\$158
DAILY	\$40	\$40	\$39	\$35
PART-DAY	\$27	\$27	\$26	\$23
HOURLY	\$5.60	\$5.60	\$5.25	\$5.25

GROUP B COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$190	\$180	\$166	\$160
Exceptions:				
Monroe	--	\$185	\$173	--
DAILY	\$45	\$43	\$39	\$38
Exceptions				
Erie	--	--	\$44	--
Monroe	--	\$49	--	--
PART-DAY	\$30	\$28	\$26	\$25
Exceptions:				
Erie	--	--	\$29	--
Monroe	--	\$33	--	--
HOURLY	\$7.00	\$7.00	\$6.25	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$145	\$135	\$135
Exceptions:				
Erie	--	\$150	\$140	--
Saratoga	--	\$150	\$150	\$143
Schenectady	\$170	\$150	\$150	\$150
DAILY	\$34	\$33	\$31	\$31

Exceptions				
<i>Columbia</i>	\$35	--	--	--
<i>Erie</i>	\$38	\$38	\$34	\$34
<i>Saratoga</i>	\$35	\$35	--	\$33
<i>Warren</i>	--	--	--	\$33
PART-DAY	\$23	\$22	\$21	\$21
Exceptions:				
<i>Erie</i>	\$25	\$25	\$23	\$23
<i>Saratoga</i>	--	\$23	--	\$22
<i>Warren</i>	--	--	--	\$22
HOURLY	\$5.00	\$5.00	\$5.00	\$4.41

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$158	\$150	\$150	\$149
Exceptions:				
<i>Erie</i>	--	\$173	\$165	\$160
<i>Schenectady</i>	\$175	\$175	\$165	\$160
DAILY	\$38	\$35	\$34	\$33
Exceptions:				
<i>Erie</i>	--	--	--	\$34
PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				
<i>Erie</i>	--	--	--	\$23
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$160
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$102	\$95	\$95
DAILY	\$24	\$23	\$22	\$22
PART-DAY	\$16	\$15	\$15	\$15
HOURLY	\$3.50	\$3.50	\$3.50	\$3.09

GROUP C COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$142	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
DAILY	\$39	\$36	\$34	\$31
PART-DAY	\$26	\$24	\$23	\$21
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
Exceptions:				
<i>Clinton</i>	--	--	--	\$135
DAILY	\$31	\$31	\$30	\$30
Exceptions				
<i>Clinton</i>	--	--	--	\$34
<i>Sullivan</i>	--	--	--	\$31
PART-DAY	\$21	\$21	\$20	\$20
Exceptions:				
<i>Clinton</i>	--	--	--	\$23
<i>Sullivan</i>	--	--	--	\$21
HOURLY	\$3.18	\$3.00	\$3.00	\$3.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$95	\$91	\$88	\$88
DAILY	\$22	\$22	\$21	\$21
PART-DAY	\$15	\$15	\$14	\$14
HOURLY	\$2.23	\$2.10	\$2.10	\$2.10

GROUP D COUNTIES:

Albany, Dutchess, Orange, and Ulster

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$205	\$190	\$175	\$176
Exceptions:				
<i>Dutchess</i>	\$227	\$215	\$197	--
DAILY	\$49	\$46	\$44	\$44
Exceptions:				
<i>Albany</i>	--	\$50	\$45	--
PART-DAY	\$33	\$30	\$29	\$29
Exceptions				
<i>Albany</i>	--	\$33	\$30	--
HOURLY	\$7.00	\$6.75	\$6.50	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$175	\$167	\$175
Exceptions:				
<i>Dutchess</i>	\$180	\$180	\$175	\$180
<i>Orange</i>	\$196	\$181	\$175	--
DAILY	\$44	\$41	\$38	\$38
Exceptions				
<i>Dutchess</i>	--	\$45	\$44	\$45
<i>Orange</i>	--	--	--	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
<i>Dutchess</i>	--	\$30	\$29	\$30
<i>Orange</i>	--	--	--	\$29
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$185	\$180	\$175	\$175
Exceptions:				
<i>Orange</i>	\$200	\$194	--	--
DAILY	\$44	\$44	\$41	\$40
PART-DAY	\$29	\$29	\$27	\$27
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$176
DAILY	\$0	\$0	\$0	\$44

PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$123	\$123	\$117	\$123
DAILY	\$31	\$29	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.20	\$4.20	\$4.20	\$4.20

GROUP E COUNTIES:

Bronx, Kings, New York, Queens, and Richmond DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$288	\$255	\$180	\$177
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$43	\$33	\$33
HOURLY	\$13.75	\$17.00	\$13.00	\$11.65

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$135	\$125	\$125
DAILY	\$34	\$35	\$35	\$31
PART-DAY	\$23	\$23	\$23	\$21
HOURLY	\$15.00	\$10.00	\$11.00	\$11.60

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$140
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$15.00	\$13.00	\$11.00	\$16.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$11.65

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
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AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$95	\$88	\$88
DAILY	\$24	\$25	\$25	\$22
PART-DAY	\$16	\$17	\$17	\$15
HOURLY	\$10.50	\$7.00	\$7.70	\$8.12

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$300
DAILY	\$ 75
PART-DAY	\$ 50
HOURLY	\$ 17

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 15, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the Block Grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan covers the period October 1, 2003 through September 30, 2005 and the proposed State Plan for the period October 1, 2005 through September 30, 2007 has been submitted for approval by the federal government. The market rates that are being replaced were issued in October 2003 and were based on a survey conducted in 2003.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey done in 2003. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on approximately 4,800 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-

home child care), age of child (*i.e.*, under 1½, 1½-2, 3-5, 6-12), and amount of time in care (*i.e.*, weekly, daily, part-day, and hourly). This data was compiled and analyzed by Suzanne Zafonte Sennett, Director within the Office's Bureau of Early Childhood Services.

The market rates for legally-exempt family child care and in-home child care were established based on a 70 percent differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider.

Revising the existing rates will help subsidized families to avoid losing their child care arrangements or being unable to find appropriate child care. This will help prevent such families from being forced to place their children in child care settings that are inappropriate or unsafe or to leave their children unsupervised. Avoiding such results is important because it can be detrimental to a child's development to experience disruption in care or to receive substandard or no care at all. The updated rates also will help subsidized families avoid having to choose whether to use their limited income to supplement the cost of child care services or to meet their basic living costs.

The proposed regulations clarify the maximum reimbursement that may be issued when a family uses multiple child care providers. When the combined reimbursement to multiple child care providers exceeds one weekly market rate, the caretaker must demonstrate that the caretaker's schedule of employment or the special needs of the child necessitates that child care services be arranged with multiple providers. If the family does not demonstrate a necessity to use multiple providers, then reimbursement is limited to the weekly market rate that is applicable for the type of provider who provides care for the highest number of hours.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the adjusted market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. When a caretaker uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as appropriate.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are necessary to implement the federal and State statutory and regulatory mandates. The language added to Section 415.9(f) is consistent with the intent of the existing regulations and is necessary to prevent recipient families and providers from exploiting the child care subsidy system by allowing providers to receive unwarranted payments in excess of the market rates. Some social services districts have informed the Office of instances in which recipient families have used multiple child care providers unnecessarily to evade the market rates, and maximize each provider's child care payments. Given the limited amount of child care subsidy funding and the unnecessary use of multiple providers in these situations, the Office made the

regulatory change to prevent the abuse of the child care subsidy system, and provide more needed funding to eligible families. The Office is aware that some families legitimately need multiple providers to address their families' unique circumstances. This regulatory change will not prevent those families from accessing the needed providers.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2005.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 70,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-06, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 licensed and registered child care providers throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care within the counties.

Social services districts will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access comparable to those families not receiving a child care subsidy. This will assist these districts to enable more temporary assistance and

low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 completed surveys from licensed and registered child care providers throughout the State. The rates were analyzed to establish market rates at the 75th percentile of the amounts charged. The market rates are clustered into five distinct groupings of

counties based on similarities in rates among the counties in each group. As a result, the rates established for rural counties are based on the actual costs of care within the counties.

Social services districts in rural areas will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers in rural areas also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

These regulations will have a positive impact on jobs or employment opportunities as the increased rates will allow child care providers to hire additional staff or improve the compensation they pay existing staff. Individuals who may have been discouraged from starting up new child care programs in low-income communities because the existing rates would not have been sufficient to support their operational costs may be encouraged by the new rates to establish such programs. In addition, by making child care more available and affordable for low-income working families, the regulations will improve the ability of employers to attract and retain employees and the ability of low-income workers to obtain and maintain jobs.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-05-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by decreasing the number of positions of Health Program Director 3 from 14 to 13 and by adding thereto the subheading "Office of the Medicaid Inspector General," and the position of Medicaid Inspector General.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-05-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by adding thereto the position of Laboratory Security Specialist (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-05-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the

Department of Health, by increasing the number of positions of Medicaid Investigator 3 from 2 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-05-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Secretary 2 from 1 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-05-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the State University of New York.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Colleges," by adding thereto the position of Secretary 2 (1) at Empire State College.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-49-05-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Correctional Services.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by deleting therefrom the position of Director of Family and Ministerial Services (1), decreasing the number of positions of Ministerial Program Coordinator from 5 to 4 and by adding thereto the position of Director Ministerial, Family and Volunteer Services (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-49-05-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from the exempt and non-competitive classes in the Department of Health and Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by deleting therefrom the position of Director Bureau Medical Assistance Program Development; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Medicaid Investigator 3 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

**Board of Commissioners of
Pilots**

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Mandatory Retirement Age for Licensed Pilots

I.D. No. COP-49-05-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 52.5 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 95

Subject: Mandatory retirement age for licensed pilots.

Purpose: To allow fit licensed pilots attaining age 65 to renew their licenses until age 70.

Text of proposed rule: Section 52.5 of Title 21 of the New York Codes, Rules and Regulations is amended to read as follows:

The term of each license granted by the commissioners, except as hereinafter provided, shall be for one year. If the age of mandatory retirement of any pilot will be reached within a year of the date of a license, then the license shall terminate as of the date of mandatory retirement. [Effective on and after June 1, 1970, the] *The* mandatory retirement age of 65 years shall apply to all pilots licensed by the board[.], *provided, however, that:*

(1) *any pilot may, within thirty days prior to attaining the age of 65 years, apply to the board for renewal of a license for a term of six months upon submitting to the board satisfactory proof of fitness, including but not limited to evidence of an acceptable eye examination as provided in section 52.4 of this Part and a report of a medical examination by a health care provider who is a physician, physician's assistant or nurse practitioner duly licensed to practice in the jurisdiction in which such examination has been conducted. The medical examination must have been administered no sooner than one month prior to the application for the renewal of the license. The report must be signed by such health care provider and must include a medical examination form satisfactory to the board showing that the pilot is fit for duty; and*

(2) *any pilot whose license has been renewed pursuant to paragraph (1) hereof may apply to the board for additional renewals of a license, each for a term of six months. Such a license shall be subject to a mandatory retirement age of 70 years. but upon attaining 68 years of age, a pilot's license (if otherwise eligible for renewal pursuant to this paragraph) shall be reduced by one grade, and may be further reduced pursuant to section 52.9 of this Part. Each such application shall be supported by all of the information required for the initial renewal. Every application for renewal made pursuant to this paragraph (2) must comply with section 52.10 of this Part, except that the board may, in its sole discretion, allow the application to be made within a reasonable time after the expiration of the license.*

Text of proposed rule and any required statements and analyses may be obtained from: Robert Pouch, Executive Director, Board of Commissioners of Pilots of the State of New York, 17 Battery Place, New York, NY 10004, (212) 425-5027, e-mail: rpouch@aol.com

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: The authority for the proposed amendment to 21 NYCRR section 52.5 is section 95 of the Navigation Law, which authorizes the Board of Commissioners of Pilots of the State of New York to amend any existing regulation of pilots, as such law was construed by the Office of the Attorney General in a formal opinion issued in 1980 (1980 N.Y. Op. Atty. Gen. 55).

2. Legislative objectives: Since 1970, the regulations of the Board of Commissioners of Pilots of the State of New York have imposed a mandatory retirement age of sixty-five. Experience since that time has indicated that a number of the most experienced licensed pilots may continue to be fit and are desirous of providing their important services for several additional years. The proposed amendment would authorize a continuation of their services up to age seventy, provided a pilot demonstrates every six months that he continues to be fit to provide such service.

3. Needs and benefits: As licensed pilots continue to live longer, they should be allowed to continue providing their important services, especially since experience is an important element of safely piloting the largest vessels in the Port of New York and New Jersey. Other states have adopted regulations similar to this proposal, and there appears to be no valid reason why pilots licensed in New York State should not be allowed to continue piloting vessels until age seventy, provided they are able to demonstrate their fitness every six months. The Board is also taking the precaution of requiring a pilot's license at age sixty-eight to be reduced by one grade, and the board retains its existing authority to further reduce the grade pursuant to section 52.9 of its regulations.

4. Costs: Since the Board of Commissioners projects that over the next ten years, only about sixteen licensed pilots will be eligible to apply for an extended license under this proposed regulation, there are no additional projected costs to the Board for administering this proposed change in its licensing program. There are no costs to other state agencies or offices of state government. There are no costs to local government. Because the proposed amendment imposes no new burdensome requirements, duties or responsibilities on any private regulated party, there will be no cost to any private regulated party, except the cost of obtaining the examinations and reports required by this proposed regulation to demonstrate fitness for the continued license. Each licensed pilot will be in a position to determine every six months whether he or she desires to incur such costs for the purpose of demonstrating fitness for the extended license, just as they now do annually up to age sixty-five.

The proposed amendment imposes additional fitness examinations upon those licensed pilots who desire to continue their licenses beyond the current age sixty-five mandatory retirement. Protection of the public interest and safety requires regular repetition of such fitness examinations.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The proposed amendment requires the submission of medical and other health-related reports on behalf of each licensed pilot who is seeking to extend a license for an additional six-month period, up to age seventy. Those reporting requirements, forms and other paperwork are the same as those required for licensed pilots below age sixty-five, who may seek renewal of their licenses every year.

7. Duplication: There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendment.

8. Alternative: The Board of Commissioners considered maintaining the current age sixty-five mandatory retirement rule and also considered whether the age of mandatory retirement could be increased without requiring demonstration of fitness at six-month intervals. The Board concluded that the public safety would not be adequately protected without such periodic fitness examinations and that there was no adequate reason to refrain from increasing the mandatory retirement age to seventy so long as fitness is demonstrated every six months.

9. Federal standards: The proposed amendment does not exceed any minimum standards of the federal government. There are no federal rules currently governing mandatory retirement ages for licensed pilots in the Port of New York and New Jersey.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the *New York State Register*. There is no schedule of compliance since any licensed pilot turning age sixty-five subsequent to such publication will be eligible to apply for the extended license. The first pilot who may turn sixty-five after such publication would do so in July, 2006.

Regulatory Flexibility Analysis

No regulatory flexibility analysis for small business and local governments is required pursuant to section two hundred two-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse economic impact on small business or local governments, and they do not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section two hundred two-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on public or private entities in rural areas, and it does not impose reporting, recordkeeping or other compliance requirements on public or private entities.

Job Impact Statement

No Job Impact Statement is required pursuant to section two hundred one-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. Indeed, the amendment will expand opportunities for licensed pilots to retain their licenses and to continue serving as pilots for up to an additional five years beyond the current age sixty-five mandatory requirement age.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School Health Services

I.D. No. EDU-49-05-00017-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 136.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 901(1) and (2); 902(1), (2) and (3); 903(1) and (2); 904(1) and (2); 905(1); (2), (3) and (4); 906(1) and (2); 911(1); 913 (not subdivided); 914(1); and L. 2004, ch. 477

Subject: School health services.

Purpose: To clarify the accommodation for religious beliefs provision to ensure consistency with Public Health Law, section 2164 and the Regulations of the Commissioner of Health and L. 2004, ch. 477.

Text of proposed rule: 1. Paragraph (2) of subdivision (a) of section 136.3 of the Regulations of the Commissioner of Education is amended, effective March 9, 2006, as follows:

(2) *except where otherwise prohibited by law*, to advise, in writing, the parent [or guardian] *of, or other persons in parental relation to*, each student in whom any aspect of the total school health program indicates [a defect, disability] *such student has defective sight or hearing, or a physical disability* or other condition which may require professional attention with regard to health.

2. Subdivision (f) of section 136.3 of the Regulations of the Commissioner of Education is amended, effective March 9, 2006, as follows:

(f) Accommodation for religious beliefs. Notwithstanding the provisions of this section, no health examinations, health history, examinations for health appraisal, [immunizations,] screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects thereto on the grounds that such examinations, health history [, immunizations] and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or the principal's designee [and shall be deemed to constitute sufficient proof of such beliefs], *in which case the principal or principal's designee may require supporting documents*.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement**STATUTORY AUTHORITY:**

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 901, as amended by Chapter 477 of the Laws of 2004, requires school health services to be provided by each school district for all students attending the public schools in this State, except in the city school districts of the cities of New York, Buffalo and Rochester.

Education Law section 902, as amended by Chapter 477 of the Laws of 2004, provides for the employment of health professionals by school districts, and requires districts to employ a director of school health services to perform and coordinate the provision of health services in the public schools and to provide health appraisals of students attending its schools.

Education Law section 903(1), as amended by Chapter 477 of the Laws of 2004, requires that health certificates be furnished by each student in the public schools upon entrance into the grades prescribed by the Commissioner in regulations.

Education Law section 904, as amended by Chapter 477 of the Laws of 2004, provides that the principal or principal's designee shall report to the director of school health services the names of all students who have not furnished health certificates or who are children with disabilities, and the director shall cause such students to be examined.

Education Law section 905(1), as amended by Chapter 477 of the Laws of 2004, requires screening examinations for vision, hearing and scoliosis at such times and as defined in the regulations of the Commissioner. Section 905(3) provides for a waiver by the Commissioner of such requirement upon specified conditions and upon rules and regulations established by the Commissioner.

Education Law section 906, as amended by Chapter 477 of the Laws of 2004, provides for the exclusion and examination upon readmittance of students showing symptoms of communicable or infectious disease reportable under the Public Health Law, and for the evaluation of teachers and other school employees and school buildings and premises as deemed necessary to protect the health of students and staff.

Education Law section 911(1), as amended by Chapter 477 of the Laws of 2004, provides that it shall be the duty of the Commissioner to enforce the provisions of Article 19 of the Education Law, and the commissioner may adopt rules and regulations not inconsistent herewith, after consultation with the Commissioner of Health, for the purpose of carrying into full force and effect the objects and intent of such Article.

Education Law section 913, as amended by Chapter 477 of the Laws of 2004, provides for medical examinations of teachers and other employees to safeguard the health of children attending public schools.

Education Law section 914, as amended by Chapter 477 of the Laws of 2004, provides that each school shall require every child entering or attending school to submit proof of immunization against certain specified diseases.

Chapter 477 of the Laws of 2004 amended and repealed certain sections in Education Law Article 19, regarding the provision of school health services in New York State schools, to extend the period of time in which students may obtain physical examinations and health certificates for school in order to facilitate and provide flexibility of scheduling for pediatricians and parents, and to update the terminology and standards to be consistent with current medical and health care practice.

LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004.

NEEDS AND BENEFITS:

At their September 2005 meeting, the Board of Regents adopted, effective September 29, 2005, amendments to sections 136.1, 136.2 and 136.3 of the Commissioner's Regulations to implement and otherwise conform the Commissioner's Regulations to Chapter 477 of the Laws of 2004.

Included among the amendments is a new section 136.3(f), which provides that no health examinations, health history, examinations for health appraisal, immunizations, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects to the health services as conflicting with their genuine and sincere religious beliefs. The new section 136.3(f) further provides that a written and signed statement from the student or the student's parents or person in parental

relation that such person holds such beliefs shall be submitted to the principal or the principal's designee and shall be deemed to constitute sufficient proof of such beliefs.

Based on comments received from the Department of Health and others after adoption of new section 136.3(f) in September, the Department has determined that the regulation conflicts with statute by including immunizations with the examinations, health histories, appraisals and screening examinations that are subject to the religious exemption language in section 136.3(f). Chapter 477 of the Laws of 2004 amended sections 903, 904 and 905 of the Education Law to provide that examinations for a health certificate or health history or screening examinations for sickle cell anemia, vision, hearing or scoliosis shall not be required where the parent or student objects on the grounds that such examinations conflict with their genuine and sincere religious beliefs. Chapter 477 did not add similar language to section 914 of the Education Law, which relates to immunizations and mandates that schools require proof of immunization in accordance with section 2164 of the Public Health Law. Subdivision 9 of section 2164 of the Public Health Law contains the religious exemption language that applies to immunizations. Under Public Health Law section 2164(9), the parent, parents or guardians may object to immunization of their child based on their genuine and sincere religious beliefs, but the student may not. Chapter 477 of the Laws of 2004 did not amend Public Health Law section 2164(9), and therefore did not provide statutory authority for extending the religious exemption language from sections 903, 904 and 905 of the Education Law to cover immunizations. Accordingly, the references to immunizations in section 136.3(f) need to be deleted.

In addition, the Department has determined that the provision in section 136.3(f) that would deem submission of a signed, written statement to constitute sufficient proof of genuine and sincere religious beliefs is inconsistent with the Legislative intent of Chapter 477 of the Laws of 2004. Chapter 477 extended the legal standard for religious exemptions that applies to immunizations – a genuine and sincere religious belief – to health examinations, health histories and screening examinations. However, requiring that school districts accept a written statement without being able to question the sincerity of the parent's and student's religious beliefs is inconsistent with the provisions in the Regulations of the Department of Health (10 NYCRR section 66-1.3), and established decisional case law, for determining such beliefs for purposes of obtaining an exemption from the immunization requirements in Public Health Law section 2164.

There is no indication in the language of Chapter 477 that religious exemptions for examinations were intended to be treated differently than religious exemptions for immunizations in this regard. In fact, it is the Department's understanding that the legislative intent was to have the same legal standard apply to both examinations and immunizations. Requiring school officials to accept a written statement as proof of a conflict with genuine and sincere religious beliefs without the ability to request additional proof of the sincerity of those religious beliefs, would not strike an appropriate balance between the state's interest in protecting the health of children by requiring that they submit to examinations and screenings and the rights of parents and students to object to such examinations on religious grounds. As with immunizations, school officials should have discretion to question the sincerity of the religious beliefs asserted by the student or parent, and to deny exemptions where the request is not based on religion but merely on personal preference.

Therefore, the proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004.

Section 136.3(a)(2) is also amended to ensure conformance to applicable legal requirements regarding disclosure of confidential information by adding the phrase "except where otherwise prohibited by law." In addition, section 136.3(a)(2) was amended to conform its provisions to Education Law section 904(1), as amended by Chapter 477 of the Laws of 2004, which provides for notification of "persons in parental relation" instead of "guardian" and provides for notification of "defective sight or hearing, or other physical disability."

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of

obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement Chapter 477 of the Laws of 2004 and to otherwise conform the Commissioner's Regulations to the Regulations of the Commissioner of Health, and will not impose any additional program, service, duty or responsibility on school districts or other local governments beyond those imposed by the statute. The proposed amendment conforms the Commissioner's Regulations to existing practice, as provided in decisional case law and the Regulations of the Commissioner of Health, regarding the determination of genuine and sincere religious belief for purposes of obtaining an exemption from required school health services.

PAPERWORK:

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations and is necessary to implement Chapter 477 of the Laws of 2004 and conform the Commissioner's Regulations to the Regulations of the Commissioner of Health (10 NYCRR section 66-1.3).

ALTERNATIVES:

The proposed amendment is necessary to implement Chapter 477 of the Laws of 2004 and conform the Commissioner's Regulations to the Regulations of the Commissioner of Health. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with proposed amendment by its effective date. The proposed amendment conforms the Commissioner's Regulations to existing practice, as provided in decisional case law and the Regulations of the Commissioner of Health, regarding the determination of genuine and sincere religious belief for purposes of obtaining an exemption from required school health services.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to accommodation for religious beliefs of parents and students regarding school district health services required pursuant to Chapter 477 of the Laws of 2004, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed amendment applies to all public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004, and will not impose any additional any additional compliance requirements on school districts beyond those imposed by the statute.

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such

person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

PROFESSIONAL SERVICES:

The proposed amendment will not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004. The proposed amendment has been carefully drafted to meet these specific statutory requirements. The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional compliance requirements or costs beyond those imposed by the statute.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004, and will not impose any additional any additional compliance requirements on school districts beyond those imposed by the statute.

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

The proposed amendment will not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004. The proposed amendment has been carefully drafted to meet these specific statutory requirements. The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional compliance requirements or costs beyond those imposed by the statute.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to accommodation for religious beliefs of parents and students regarding school district health services required pursuant to Chapter 477 of the Laws of 2004, and is needed to ensure consistency with regulations of the Department of Health. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Voting Systems Standards

I.D. No. SBE-49-05-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Repeal of Parts 6209, 6210 and 6211 and addition of new Part 6209 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 7-201, 7-203 and 7-204; and L. 2005, ch. 181

Subject: Voting systems standards.

Purpose: To establish testing procedures for voting systems to assure they meet all statutory requirements for use in New York State.

Public hearing(s) will be held at: 10:30 a.m., December 13, 2005 at Monroe County Board of Elections, Townline Rd., 2595 Brighton-Henrietta, Rochester, NY, Contact: Peter Quinn (585) 428-4550; 10:30 a.m., December 16, 2005 at Legislative Office Bldg., Hearing Rm. A, Albany, NY, Contact: Diane (518) 455-2051; and 10:30 a.m., December 20, 2005 at Senate Hearing Room, 19th Fl., Rm. 1920, 250 Broadway, (across from City Hall) New York, NY, Contact: Judy Stupp (212) 298-5501

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule (Full text is posted at the following State website: www.elections.state.ny.us): This rulemaking consolidates three sets of regulations into one set, eliminating unnecessary repetition and making it easier for vendors to know what must be done to have voting systems certified for use in New York State.

These rules require all systems submitted in New York State must first have met federal certification requirements for voting systems. In addition to the federal requirements, systems for use in polling places must:

- (1) Provide a full ballot display on a single surface.
- (2) Provide a device which produces and retains a voter-verifiable permanent paper record, pursuant to statute, which the voter can review and/or correct prior to the casting of their vote.
- (3) Provide a device or means by which the votes cast on the machine can be printed or recorded or visually reviewed after the polls are closed.
- (4) Provide a battery power source in the event that the electric supply used to make the voting system equipment function if disrupted. Such batteries must be rechargeable and have minimum five-year life when used under normal conditions.
- (5) The system shall contain software and hardware required to perform a diagnostic test of system status, and a means of simulating the random selection of candidates and casting of ballots in quantities sufficient to demonstrate that the system is fully operational and that all voting positions are operable.

(6) The system shall be designed to protect against dust and moisture during storage and transportation.

In addition to the above requirements, fully-accessible voting equipment certified by the State Board shall meet the following requirements for usability by voters who are disabled:

(1) The equipment shall be equipped with a voting device with tactile discernable controls, pursuant to statute.

(2) Equipment shall be equipped with an audio voting feature, pursuant to statute.

(3) Equipment must be capable of being equipped with voting device of a sip and puff technology nature, pursuant to statute.

All voting equipment must also meet standards for noise levels and environmental standards.

These regulations cover the certification procedures and requirements for both direct recording electronic devices and optical scan systems. All systems must be tested to assure they meet all the standards set out in statute. Testing must be done by an independent testing authority together with the State Board of Elections. Certification procedures will test both software and hardware, in the actual functioning of the system, and the security of the system.

Vendors whose systems are certified are required to provide maintenance support and training for local boards of elections which use their systems. These obligations must be detailed in the purchase contract between local boards of elections and the vendor. Such contracts must also detail delivery dates and places.

These regulations require re-examination and certification for every modification made to a previously certified system, and provide for the rescission of certification whenever a system no longer meets statutory requirements for use in New York State.

Text of proposed rule and any required statements and analyses may be obtained from: Patricia Murray, New York State Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-6367, e-mail: pmurray@elections.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A) Statutory Authority

Election Law § 3-102 gives general rule making authority. Election Law §§ 7-201, 7-202, 7-203 and 7-204 give specific rule making authority with regard to the examination of voting systems, the requirements of voting systems, the required use of voting systems and the purchase of voting systems. Specific rule making authority for all these purposes is included in Chapter 181 Laws of 2005.

B) Legislative Objectives

The State Board of Elections is required by statute to certify voting machines and systems for use in New York State. This is a process whereby the SBOE affirmatively ascertains that a voting system or voting machine meets all the statutory requirements and can be relied upon to accurately configure ballots and record votes in an election. Voting machines and systems which are purchased and delivered for use in this state must also be tested to assure they meet the specifications of the machine or system as certified.

C) Needs and Benefits

The statute mandates both the certification process, and the promulgation of rules and regulations to govern the process. To assure that the certification procedure is fair and accurate, and open, there must be objective standards which apply to everyone. The promulgation of these regulations assures that all stakeholders: vendors, the voting public, county boards of elections, have access to the steps in the certification process. And can be assured that all machines and systems certified by the State Board of Elections can indeed be relied upon to accurately configure ballots and record votes, assuring fair elections.

D) Costs

All costs for the certification process are borne by the vendors, per statute. There will be no additional costs to state or local governments as a result of the enforcement of these regulations.

E) Local Government Mandate

There is a statutory mandate that only voting machines and systems certified by the State Board of Elections may be used for elections in the state. These regulations aid in the implementation of that mandate without adding to the burden it already imposes.

F) Paperwork

These regulations do not require any additional paperwork or record keeping by county boards of elections or any other governmental entity.

G) Duplication

These regulations do not duplicate existing regulations or statutes. There are federal regulations governing voting system standards; New York's regulations go beyond what is required in the federal standards.

H) Alternatives

New York State Law requires voting systems be certified as meeting statutory standards in order to be used for elections here. Our statutory standards include federal voting system standards, and add several that are specific to NYS. These regulations require certification of compliance with federal standards be obtained prior to submission for NYS certification. The state certification process will test for state-specific standards. The alternative would be for New York State to test for both federal and state standards.

I) Federal Standards

There are federal voting system standards and a federal certification process. These regulations do not duplicate the federal process. They incorporate the federal standards, by requiring and accepting federal certification to federal standards prior to certification to NYS standards.

Specific New York State statutory requirements include but are not limited to: full face ballot requirement, the ability to allow for cross endorsement of candidates, and the provision of a voter verifiable paper trail for audit purposes. The certification process tests for those NYS specific requirements only after a voting machine or system has been federally certified for those requirements the state has in common with the federal standards.

J) Compliance Schedule

Compliance is possible upon the adoption of these regulations.

Regulatory Flexibility Analysis

The statute requires vendors to bear the costs of certification of their voting systems. We considered alternatives for small New York businesses, but are limited by the statutory mandate. The \$5,000 escrow requirement is an industry minimum for certification testing.

Pursuant to statute, these regulations require training on the newly certified voting systems. The vendor is responsible for providing that training for elections personnel. The county boards of election will be responsible for providing that training to the general public, and there are federal HAVA funds available to cover those costs.

Rural Area Flexibility Analysis

Pursuant to statute, these regulations require training on the newly certified voting systems. The vendor is responsible for providing that training for elections personnel. The county boards of election will be responsible for providing that training to the general public, and there are federal HAVA funds available to cover those costs.

Job Impact Statement

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State.

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate revisions California has made to its vehicle emission control program regarding the reduction of greenhouse gas (GHG) emissions from motor vehicles; and update various incorporation by reference citations included in the LEV program.

Substance of final rule: The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Part 218 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department in the course of amending this Part. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate modifications California has made to its vehicle emission control program to reduce greenhouse gas (GHG) emissions. The Department is amending sections 218-1.2 Definitions, 218-2.1(b) Prohibitions, 218-8 GHG Exhaust Emission Standards, and 218-9 Severability. The remaining sections are unchanged.

Section 218-1.2 was amended to include revisions to definitions that govern the provisions of this Part. Section 218-2.1(b) was also amended to change Subpart to Part to clarify applicability.

Section 218-8.1 lists the definitions that govern the GHG provisions of this Part. Section 218-8.2 establishes the prohibitions that pertain to the GHG provisions. Specifically, these provisions apply to all 2009 and subsequent model year new vehicles delivered or sold in New York.

Section 218-8.3 has been revised to incorporate the proposed fleet average GHG exhaust emission standards established by California, as well as credit and debit trading provisions. The standards are in CO₂ equivalent grams per mile for passenger cars/light duty truck1 (PC/LDT1) and light duty truck2 (LDT2) vehicle categories. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

CO₂ equivalent grams per mile standards are obtained by multiplying the emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFC) by their global warming potentials and adding them together. Global warming potential (GWP) is an estimate of the climate changing ability of 1 kilogram of any GHG relative to the climate changing ability of 1 kilogram of CO₂. Over a 100 year period, CO₂ has a GWP of 1, CH₄ is 23, N₂O is 296, and HFC-134a is 1300. The Department incorporates California standards identically, which includes a declining fleet average standard for model years 2009 through 2016. This is done similar to the existing LEV program. The standards are shown below.

CO₂ Equivalent Emission Standards for Model Years 2009 through 2016

Tier	Year	CO ₂ Equivalent Emission Standard by Vehicle Category g/mile	
		PC/LDT1	LDT2
Near-Term	2009	323	439
	2010	301	420
	2011	267	390
	2012	233	361
Mid-term	2013	227	355
	2014	222	350
	2015	213	341
	2016	205	332

An alternative compliance option is also adopted in section 218-8.4, as in California. This provision will provide vehicle manufacturers flexibility in meeting the GHG reduction requirements by allowing them to earn credits by utilizing 2009 and subsequent model year vehicles that operate on alternative fuel vehicles. The manufacturers will be required to demonstrate that the vehicles achieve equal or greater GHG reductions as compared to the regulations and meet strict eligibility criteria. The criteria include real or additional GHG emission reductions, reductions must be regulatory surplus, permanent, and enforceable. The Department adopts California criteria and crediting for determining acceptable alternative compliance programs.

The Department also includes New York specific GHG exhaust emissions reporting requirements in section 218-8.5. Starting with the 2009 model year, each manufacturer must report the average GHG emissions of its fleet sold in New York to the Department. These reports will contain the same information and format as those submitted to California.

Existing section 218-8 was renumbered to create section 218-9. This section contains severability provisions.

Department of Environmental Conservation

NOTICE OF ADOPTION

Emission Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-20-05-00018-A

Filing No. 1382

Filing date: Nov. 22, 2005

Effective date: 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 200.9 and Part 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105; and Federal Clean Air Act, section 177

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.9 and 218-1.2(e).

Text of rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., Director of Air Resources, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8292, e-mail: jtmarsa@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to Article 8 of the (State Environmental Quality Review Act), a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule was approved by the Environmental Board.

Revised Regulatory Impact Statement

There were no changes made to the previously published Regulatory Impact Statement. The effect of the regulations remains the same.

Revised Regulatory Flexibility Analysis

There were no changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The effect of the regulation on small businesses and local governments remains the same.

Revised Rural Area Flexibility Analysis

There were no changes to the previously published Rural Area Flexibility Analysis. The effect of the regulations on rural areas remains the same.

Revised Job Impact Statement

There were no changes to the previously published Job Impact Statement. The effect of the Regulations remains the same.

Summary of Assessment of Public Comment

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 New York Codes, Rules, and Regulations, Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines, and Section 200.9, Referenced Material to reflect changes to California's low emission vehicle (LEV) program that incorporated greenhouse gas (GHG) standards for light and medium-duty vehicles, and to maintain identical standards with California for all vehicle weight classes as required under Section 177 of the Clean Air Act. Section 177 of the Clean Air Act provides that states may adopt the California new vehicle emissions standards provided that these standards are identical to California's.

The Department proposed Part 218 on April 28, 2005. Hearings were in Avon on July 5, 2005, in Long Island City on July 6, 2005, in Ray Brook on July 7, 2005, and in Albany on July 8, 2005. The comment period closed at 5:00 p.m. on July 15, 2005. The Department received written and oral comments from 4,450 commentors on the proposed regulation. All of these comments have been reviewed, summarized, and responded to by the Department.

The overwhelming majority of commentors supported the Department's adoption of the greenhouse gas emission standards. The remainder, primarily vehicle manufacturers and those affiliated with the auto industry, were opposed to the regulation for various reasons. The comments covered general support for and opposition to the regulation, impacts on public health and the environment, fuel efficiency, vehicle choice, economic impacts, alleged State Environmental Quality Review Act (SEQRA) violations, and legal concerns.

Commentors supported the Department's adoption of the regulation in light of perceived federal inaction with regard to climate change. Several stated that reducing greenhouse gas emissions from vehicles was vital since the transportation sector accounts for approximately one-third of all greenhouse gas emissions. Further, many stated that New York's adoption of the California greenhouse gas standards would create a larger market and provide a clear incentive to manufacturers to produce compliant vehicles on a national scale. The Department agreed that in the absence of national action, state action and regionally coordinated policies offer a path for progress on this critical issue.

Comments were received imploring the Department to adopt the greenhouse gas standards in order to mitigate impacts on public health and the environment. A few comments were received that stated that the potential impacts were overstated or would not occur. Some of the health concerns raised by the commentors included increased occurrences of asthma, heat-related deaths, and vector-borne illness as a result of climate change. The Department's goal is to reduce the potential adverse impacts on public health by reducing the climate changing emissions from motor vehicles. Greenhouse gas emissions contribute to conditions favorable to the formation of ground-level ozone. These conditions include increased temperature, strong sunlight and stable air masses. The increased concentrations of ground-level ozone could adversely impact groups afflicted with respiratory illnesses, including children and the elderly. The severity of New York's air quality problems means that New York State must maintain

compliance with California's standards, or revert to less stringent federal standards. If this occurs, New York would lose the emission reduction benefits achieved by the LEV program.

Some of the environmental concerns included sea level rise, loss of ecosystems, agricultural and forest mix changes, reduced species diversity, and impacts on water sources and supplies. Commentors concurred with the Department's conclusion that greenhouse gas emissions may potentially result in a diverse array of harms to the citizens and natural environment of New York, including: rising sea levels that will directly impact New York's barrier islands, coastal wetlands and bays, and coastal and urban infrastructure; damage to coldwater fisheries in the Adirondack and Catskill parks; and changes to the nature of the trees in the Adirondack and Catskill Parks, including adverse impacts on sugar maple trees and the maple syrup industry.

Several comments were received regarding fuel economy improvements. Supporters of the standards stated that consumers would benefit due to reduced operating expenses. Commentors opposed to the standards stated that the greenhouse gas emission standards were actually fuel economy standards, and as such, were preempted by federal standards. The proposed standards are emission standards, not fuel economy standards. The Department concluded that the use of advanced technologies may also increase fuel efficiency. Consumers could save money due to decreased operating expenses over the life of the vehicle, as well as decreased fuel consumption.

Contrary to the commentors' assertion, the proposed revisions to Part 218 are emissions standards, not fuel economy standards. California set, and New York is proposing to adopt, standards for emissions of greenhouse gases from motor vehicles. The Energy Policy and Conservation Act (EPCA) and the Clean Air Act (CAA) regulate two different subjects, fuel economy and air pollution, respectively, and for two different reasons: reducing energy consumption and protecting the public health and welfare from air pollution. The Corporate Average Fuel Economy (CAFE) standards promulgated pursuant to EPCA, in contrast, set a mile per gallon standard. While automobile manufacturers' responses to regulations enacted pursuant to these two statutes may overlap, that overlap is not a conflict. In fact, Congress has expressly acknowledged that EPA (and California) are authorized under the CAA to set motor vehicle emissions standards that may affect fuel economy, but Congress did not limit EPA's authority to set emission standards for that reason. The flexibility provided by the regulation will enable manufacturers to continue to offer their current mix of vehicles. However, if a manufacturer does choose to reduce vehicle weight, their vehicles are still required to meet federal safety standards.

Several commentors stated that the greenhouse gas emission standards would increase consumer choice. Commentors opposed to the regulation stated that compliance with the standards could only be achieved through vehicle weight reduction, downsizing, removal of features, and/or abandonment of vehicle markets. Full-line manufacturers stated that they would be adversely impacted to a much larger degree due to their product mix, which includes large sport utility vehicles and trucks. The Department responded that the greenhouse gas emission standards provided adequate compliance flexibility and leadtime to enable all vehicle manufacturers to achieve compliance. It is anticipated that manufacturers will be able to achieve compliance while maintaining, or improving upon vehicle performance levels demanded by consumers. Furthermore, the flexibility provided by the regulation will enable manufacturers to continue to offer their current mix of vehicles. Manufacturers may choose to reduce vehicle weight if they wish, but it is not required. If manufacturers choose to reduce vehicle weight, they would still be required to meet all vehicle safety standards.

Further, the Department believes it is counterintuitive to claim that any manufacturer will abandon a market as large as California, New York, and those states that participate in the LEV program under Section 177 of the Clean Air Act. The Department notes that the individual manufacturers that commented on this rule (DaimlerChrysler, Ford, General Motors) did not state that they would be forced to abandon this market.

Several commentors allege that the Department did not comply with SEQRA requirements. They allege that the Department did not consider any adverse environmental impacts that may occur as a result of adoption, specifically rebound and fleet turnover effects. The commentors state that these effects will result in increased criteria pollutant emissions from regulated vehicles, thereby negating any benefit of the regulation.

The Department took the requisite hard look at the evidence available when it proposed the regulation and identified the relevant areas of environmental concern. The Department concluded that no adverse environ-

mental impacts will occur from the “rebound” effect for the following reasons: 1) the Department agrees with CARB’s analysis of the U.C. Irvine (Irvine) study cited in CARB’s Initial Statement of Reasons (ISOR), an analysis that is further borne out in CARB’s Final Statement of Reasons, and 2) a comparison of New York’s fleet characteristics with California’s fleet.

The Irvine study projects a minimal increase in VMT in California, assuming a 25 percent reduction in operating costs and a minimal dynamic rebound effect. The Department believes that New York would see similar, although lessened, results due to differences in fleet vehicle miles traveled (VMT).

New York’s vehicle fleet is smaller than California’s and therefore accumulates less VMT per year. In 2002, New York had less than half of the new vehicle registrations that California had; approximately 696,000 new vehicle registrations as compared to approximately 1,500,000. New York assumed a useful vehicle life of approximately 14 years for a passenger car as compared to 16 years for California. This shorter useful life is expected to result in faster fleet turnover. In short, the Department expects a lower reduction in operating costs, and although not to the same degree as in California, a minimal rebound effect because of shorter vehicle life.

Commentors suggested a rebound in VMT ranging from 36 percent to 44 percent. Both of these assumptions appear to be unrealistically high for the reasons set forth in the California ISOR. The Department expects to see some increase in VMT, but does not believe that this would negate the reduction in greenhouse gases that this regulation would achieve. The Department agrees with CARB’s assertion that older vehicles tend to be driven less, which would appear to imply that emissions may not increase significantly. Based on an analysis of commentors’ methodology, the Department believes that the analysis prepared by CARB is superior to that of the commentors, and is more likely to predict the actual outcome.

With regard to fleet turnover, the Department agrees with the results of CARB’s analysis of this issue in the ISOR. Using the CARBITS model, CARB estimated that the GHG regulation would have a minimal effect on fleet aging and consequently a negligible effect on tailpipe emissions. The Department believes that fleet turnover would be accelerated in New York because, as discussed above, New York vehicles have a shorter useful life than California vehicles.

The Department notes that the manufacturers have predicted reduced fleet turnover in previous rule adoptions, including the LEV and ZEV rulemakings. Manufacturers claimed that vehicle price increases would result in reduced fleet turnover and increased emissions from older, higher emitting vehicles which would remain in service longer. The Department notes that vehicle prices have routinely increased without a corresponding decrease in vehicle sales, thereby refuting the auto industry’s dire predictions. Using past rule adoptions as an indicator, the Department continues to believe this same conclusion will apply to the greenhouse gas rule.

Several commentors supporting the standards stated that consumers would experience savings due to reduced operating costs. Commentors opposed to the standards, specifically those affiliated with the auto industry, stated that they would be harmed economically and the Department’s analysis was flawed. The Department believes the analysis of the technical feasibility and cost-effectiveness is technically accurate and scientifically sound, and is comparable to the analysis performed for the highly successful LEV I and LEV II programs.

Dealerships stated that they would suffer economically from reduced sales due to increased vehicle prices. The Department concluded that while new vehicle prices may increase in later years of the regulation, the net cost to consumers would decrease as a result of decreased operating expenses. Therefore, it is conceivable that consumers would place a premium on these vehicles, a possibility echoed by some commentors.

Commentors opposed to the standards stated that the Department lacks state authority to regulate greenhouse gases because greenhouse gases are not “air pollution” under the Environmental Conservation Law. The Department concluded that the New York State Environmental Conservation Law (ECL) provides clear and express authority for the Department to adopt California emission standards. This issue was decided in New York State courts over a decade ago. The Department is “expressly authorized to promulgate extensive regulations limiting exhaust emissions from motor vehicles including adoption of California certification standards”. *MVMA v. Jorling*, 152 Misc. 2d 405 (N.Y. Sup. 1991). The court clearly addressed the separation of powers issue, finding that the NYS Legislature had set out the overall policies to be followed and had authorized the Department to fill in the details with respect to regulation of motor vehicle exhaust emissions.

The commentor attempts to distinguish between GHGs and other “authorized pollutants” on several bases. The commentor seems to be saying that CO₂ is not injurious or harmful to human, plant or animal life. However, as the definition in § 19-0107(3) recognizes, an air contaminant in sufficient quantities may cause injury – *i.e.*, result in air pollution. While CO₂ may not be harmful at lower concentrations, however, the presence of CO₂ in the earth’s atmosphere at higher concentrations is plainly harmful. Indeed, other materials incorporated into the commentor’s comment package contain references to the impact of anthropogenic sources of GHG on warming trends. Noise is another example of an “air contaminant” listed § 19-0107(2) that may not cause injury until it is present in a certain quantity.

The New York State Legislature clearly intended to give the Department very broad authority to regulate sources of air pollution, including motor vehicles. In doing so, it defined air pollution and air contamination in an expansive fashion – more expansively, in fact, than the Clean Air Act defines “air pollutant.” See CAA § 302(g) (definition of “air pollutant” does not include noise). As the Department has stated in the supporting RIS, greenhouse gas emissions will result in a diverse array of harms to the citizens and natural environment of New York, including: rising sea levels that will directly impact New York’s barrier islands, coastal wetlands and bays, and coastal and urban infrastructure; damage to coldwater fisheries in the Adirondack and Catskill parks; and changes to the nature of the trees in the Adirondack and Catskill Parks, including adverse impacts on sugar maple trees and the maple syrup industry.

Commentors opposed to the standard stated that California’s greenhouse gas emissions standards are preempted by Section 209(a) of the Act, and will not be entitled to a waiver of preemption under the Act Section 209(b), therefore New York will not be able to adopt under Section 177 of the Act. New York concurs with California’s determination that these GHG regulations are emission standards which California is permitted to adopt under its Section 209 authority. The waiver language in the Act clearly presumes the issuance of a waiver and places the burden on EPA to show that California does not meet the criteria for a waiver.

Commentors stated that efforts to reduce greenhouse gas emissions by individual states or groups of states interfere with national policy in this area, and are therefore preempted by the foreign affairs power and the Supremacy Clause of the US Constitution. The Department disagrees that these regulations interfere with the foreign policy of the United States. Regulating air pollution is traditionally an obligation of states, including regulating emissions from motor vehicles. The Department’s efforts to regulate greenhouse gases will compliment the minimal efforts made by the current administration to reduce greenhouse gas emissions.

There were several comments with regard to the 10 percent equity ownership provision in the California standards. This revision states that when one manufacturer owns 10 percent or more of the shares of another, the two companies may only meet their greenhouse gas obligations by coordinating key strategic decisions. Such coordination among competitors violates federal antitrust laws. This requirement does not violate federal antitrust laws. It is the Department’s understanding that these requirements are simply a continuation of California’s alignment of its testing procedures with federal testing procedures. As certification under California’s testing procedures is exclusively handled by CARB, we defer to California’s expertise.

Commentor stated that the California greenhouse gas rule excessively burdens interstate commerce for no local benefit. The regulation does not violate the Interstate Commerce Clause. The regulation of emissions from motor vehicles is specifically authorized by Section 177 of the CAA. Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with Interstate Commerce, which this regulation does not. The proposed regulation affects all automakers, as does the current low emission vehicle program. They will be required to sell the same vehicles in New York as sold in California, as they are currently obligated to do under the LEV program — and as Congress envisioned when it enacted Section 177 of the Act. In addition, other Northeast states are proposing to adopt these standards creating, at a minimum, a regional market for these vehicles. The creation of such a market is at odds with inhibiting interstate commerce. Finally, courts give a strong presumption of validity to public health and safety regulations. Air pollution regulation is legislatively and historically a state responsibility. As discussed in the RIS, the impacts of GHGs on New York’s citizens and natural environment is enormous. Improving air quality by regulating local sources of air pollution is not only a legitimate local public interest, but New York’s legal obligation under the Act.

Commentors stated that New York is not required to adopt such standards to remain identical to California. The Department believes that Section 177 of the Act requires New York to adopt all emissions standards in a weight class in order to remain identical to California's emission standards. As with any other motor vehicle emission standard, New York is obligated to follow California's lead if it is to maintain the benefits of the LEV program.

Commentors claimed that a state may only adopt California standards for which a waiver has been granted by EPA under Section 209 of the Act. The plain language of section 177 of the Act permits New York to adopt, but not enforce, California's emissions standards before a waiver has been granted. This issue was clearly settled by the United States Court of Appeals for the Second Circuit in 1994.

NOTICE OF ADOPTION

Access to Records

I.D. No. ENV-28-05-00007-A

Filing No. 1374

Filing date: Nov. 18, 2005

Effective date: Dec. 7, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 616 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 3-0301(2)(a); Public Officers Law, sections 87, 89, 92, 94, 95 and 96; and L. 2005, ch. 22

Subject: Access to records.

Purpose: To bring the regulation into conformity with the Public Officers Law regarding agency response to requests for records and with respect to records containing information on critical infrastructure and/or trade secrets as well as correct outdated information and clarify protocols on providing access to records.

Substance of final rule: The proposed rule will amend, repeal, and replace sections of Part 616, as it currently appears in 6 NYCRR. These amendments will update information such as Department addresses and internet access. In addition, the amendments will clarify and conform section 616.7 to existing law. Section 616.7 governs access to records that are identified as containing trade secrets, confidential commercial information, or critical infrastructure information. In 2003, the Legislature amended Public Officers Law (POL) section 89 (5)(1-a) to address handling of agency records containing critical infrastructure. To be consistent with this statutory amendment, the Department has proposed this rule change.

Persons submitting records to the Department may identify records or portions of records as containing critical infrastructure information pursuant to POL section 89(5)(1-a). The statute sets forth procedures for handling these records so identified. POL sections 89(5)(1-a)-(3).

The proposed rule will bring the regulatory definition of trade secrets into conformity with POL section 87(2)(d).

The amendments also make the Department's Access to Records regulations current with Laws of New York 2005 with respect to agency obligations to respond to freedom of information law (FOIL) requests.

The amendments provide that the Department in accordance with POL section 87(3)(c) law will update its subject matter lists "periodically, but not less than twice per year."

The amendments conform the regulations to section 94 of the Personal Privacy Protection Act of the POL with respect to duties of the Department's privacy compliance officer and staff with respect to handling of personal information.

The proposed rule also clarifies, consistent with law, that requests for access to records must be in writing and that in situations in which the description of the records sought is so unclear that the Department cannot retrieve the information without resorting to extraordinary means that the Department staff shall so notify the requester pursuant to POL section 89(3).

The proposed rule amendment also makes gender neutral certain language concerning appeals.

The Department is authorized by Environmental Conservation Law section 3-0301(a), General Functions, Powers, Duties and Jurisdiction and POL sections 87 and 89, Freedom of Information Law and POL sections 92, 94, 95 and 96, the Personal Privacy Protection Law to make these regulatory amendments. These laws govern state agency responsibilities with respect to providing the public with access to agency records.

These amendments will ensure that the Department's regulations governing access to records are in accord with New York State law. The benefits to these amendments are that they will eliminate confusion engendered by any current disparities between the law and the Department's regulations and will clarify the obligations of the Department and its protocols with respect to FOIL requests.

The complete text of the express terms may be found at <http://www.dec.state.ny.us/website/regs/part616.html>.

For more information: contact Helene G. Goldberger – (518) 402-9003 or e-mail: hgoldbe@gw.dec.state.ny.us

Final rule as compared with last published rule: Nonsubstantive changes were made in section 616.6(c).

Text of rule and any required statements and analyses may be obtained from: Helen G. Goldberger, Office of Hearings and Mediation Services, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9003, e-mail: hgoldbe@gw.dec.state.ny.us

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Revised versions of the RIS, RFA, RAFA and Statement in lieu of JIS are not required because the very minor change made to the express terms does not change the aforementioned documents.

The change to the express terms resulted from a comment submitted to the Department by three members of the Assembly. The original proposed amendment to the rule provided that the Department would update its subject matter list periodically instead of the current language of twice a year. 6 NYCRR 616.6(c). In response to the comment received on this matter, the Department is modifying its amendment to require the subject matter list be updated "periodically, but not less than twice per year."

This minor change in the express terms does not alter the content contained in the RIS, RFA, RAFA or Statement in Lieu of Job Impact Statement.

Assessment of Public Comment

The Department of Environmental Conservation received one letter in response to its Notice of Proposed Rulemaking that was published in the July 13, 2005 edition of the *State Register*. This letter dated and received on August 29, 2005 from New York State Assemblymen Thomas P. DiNapoli, Ruben Diaz, Jr. and James F. Brennan raised two concerns with respect to the proposed rulemaking.

The first issue relates to the Department's proposal to change the requirement in 6 NYCRR § 616.6(c) that DEC updates its Subject Matter List "not less than twice per year" to "periodically." While the assemblymen acknowledged that this change is one that is also being proposed by the Committee on Open Government (COG), they suggested that the Department wait until this change is made until COG finalizes its rules.

Public Officers Law section 87(3)(c) requires that agencies maintain "a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article. The Department's subject matter list is drawn from DEC's records retention schedules database. The Department continually updates this list as record series are added, removed, or amended. Thus, the intent of the amendment was to reflect the fact that the Department is continually updating its list. However, in response to the concern of the commenters, the Department is modifying the amendment to retain the "not less than twice per year" language. The amended 6 NYCRR § 616.6(c) will now read as follows: "The subject matter list shall be updated periodically, but not less than twice per year. The most recent update shall appear on the first page of the subject matter list."

The second issue relates to the Department's proposal to require that requests for access to records be made in writing (6 NYCRR § 616.5[a]). The commenters acknowledge that COG's rules provide that an agency may require that such request be in writing. 21 NYCRR § 1401.5(a). However, they argue that because this is not mandated, the former version of the regulations be maintained because that will allow greater accessibility.

Public Officer's Law § 89(3) provides that entities subject to FOIL's requirements respond to requests for records ". . . within five business days of the receipt of a written request for a record reasonably described . . ." The Department has determined that a written request is the best means to ensure that it is entirely clear what records a requester is seeking and to ensure compliance with FOIL's time requirements. In no way is this requirement meant to restrict record accessibility. Rather, its purpose is to ensure accountability.

The Public Officers Law (POL) does not require that agencies' access to records regulations be identical to those of COG. Department staff has been careful to rewrite selected portions of Part 616 to maximize efficiency

of the agency's operation while being mindful of the letter and spirit of the Freedom of Information Law (FOIL). These commenters recommended that DEC consult with COG about this proposed rulemaking. From early on in this rulemaking process, the Department has provided COG with drafts of the proposed revisions and received only a positive response from the Director.

Based upon the above submissions and analysis, the Department has determined to proceed to adopt the proposed regulations as final.

Department of Health

EMERGENCY RULE MAKING

Self Attestation of Resources for Medicaid Applicants and Recipients

I.D. No. HLT-49-05-00015-E

Filing No. 1377

Filing date: Nov. 22, 2005

Effective date: Nov. 22, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 360-2.3(c)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366-a(2)

Finding of necessity for emergency rule: Preservation of public health and general welfare.

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule: Chapter 1 of the Laws of 2002 provides that Medicaid applicants and recipients seeking coverage of long-term care services, other than short-term rehabilitation, must provide adequate documentation to verify the amount of their accumulated resources. Persons who are not seeking coverage of long-term care services, or who are seeking coverage of short-term rehabilitation services, as defined by the Commissioner of Health, are allowed to attest to the amount of their resources.

The proposed regulation would provide the definition of the term "short-term rehabilitation" required by Chapter 1 of the Laws of 2002 and necessary to implement the provisions of such Chapter. The sooner the provisions of the statute can be implemented, the sooner the statutory goal of simplifying Medicaid enrollment and recertification will be achieved, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rulemaking requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Self attestation of resources for Medicaid applicants and recipients.

Purpose: To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long-term care services.

Text of emergency rule: Paragraph (3) of subdivision (c) of Section 360-2.3 is amended to read as follows:

(3) Verification of resources. (i) *The applicant may attest to the amount of his or her resources, unless the applicant is seeking coverage for long-term care services. For purposes of this paragraph, long-term care services shall include those services defined in subparagraph (ii) of this paragraph, with the exception of short-term rehabilitation as defined in subparagraph (iii) of this paragraph.* The applicant must provide documentation of all available or potentially available resources when applying for long-term care services. The social services district must record the documentation provided and determine the availability of such resources.

(ii) *Long-term care services shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the Public Health Law; provided in an intermediate care facility certified under article sixteen of the Mental Hygiene Law; provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of Mental Hygiene Law; provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; provided by a*

home care services agency, certified home health agency or long-term home health care program as defined in section thirty-six hundred two of the Public Health Law; provided by an adult day health care program in accordance with regulations of the Department of Health; provided by a personal care provider licensed or regulated by any other state or local agency; provided in a hospital that is equivalent to the level of care provided in a nursing facility; and provided by an assisted living program in accordance with regulations of the Department of Health. Long-term care services also shall include: private duty nursing; limited licensed home care services; hospice services including services provided by the hospice residence program in accordance with the regulations of the Department of Health; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

(iii) *Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 19, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363-a(2) of the SSL requires the Department to establish such regulations as may be necessary to implement the program of medical assistance for needy persons (Medicaid). Section 366-a(2)(a) of the SSL provides that a Medicaid applicant must provide information and documentation necessary for the determination of initial and ongoing eligibility. A new section 366-a(2)(b) of the SSL, as enacted by the Health Care Reform Act of 2002, provides that an applicant may attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term care services. An exception is made for short-term rehabilitation. For purposes of this provision, section 366-a(2)(b) of the SSL references the long-term care services described in paragraph (b) of section 367-f(1) of the SSL and authorizes the Commissioner of the Department to define the term "short-term rehabilitation."

Legislative Objectives:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State, and requires the Department to promulgate any necessary regulations which are consistent with federal and State law. The proposed regulatory amendment is necessary to define long-term care services and short-term rehabilitation for purposes of attestation of resources.

Needs and Benefits:

The purpose of the proposed regulatory amendment is to revise section 360-2.3(c)(3) of the Medicaid regulations concerning verification of resources. Currently, in determining whether an applicant is financially eligible for Medicaid, the applicant must provide documentation of all available or potentially available resources. A new subdivision (2) of section 366-a of the SSL, as enacted by the Health Care Reform Act of 2002, allows an applicant to attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term services. The section also allows an applicant to attest to the amount of his or her resources if Medicaid coverage is needed for short-term rehabilitation. The proposed regulatory amendment to section 360-2.3(c)(3) allows certain applicants to attest to the amount of their resources and to define the long-term care services for which resource documentation will still be required. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

As required by section 366-a(2)(b) of the SSL, the proposed regulatory amendment includes in the definition of long-term care services, those services described in section 367-f (1)(b) of the SSL. These services include care, treatment, maintenance and services: provided in a nursing facility licensed under article twenty-eight of the Public Health Law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the Public Health Law; provided by an adult day health care program in accordance with regulations of the Department of Health; or provided by a personal care provider licensed or regulated by any other state or local agency. In addition, the proposed regulatory amendment designates as long-term care services, for purposes of resource attestation, the following: a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility ("alternate level of care"); services provided in an intermediate care facility certified under article sixteen of the Mental Hygiene Law; services provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of the Mental Hygiene Law; services provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; services provided by an assisted living program; private duty nursing; limited licensed home care services; hospice care including the hospice residence program; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

Section 366-a(2)(b) of the SSL allows attestation of resources by applicants seeking Medicaid coverage of short-term rehabilitation as defined by the Commissioner of the Department. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

Costs:

There should be no additional costs associated with this regulatory amendment. An analysis of several eligibility simplification proposals was performed in 2001 and it was concluded that while a fiscal impact could occur if applicants provided inaccurate information about their resources, this was unlikely. Since neither the Child Health Plus (CHP) nor the Family Health Plus (FHP) program have resource tests, it was determined that those Medicaid applicants who had excess resources would most likely still be eligible for either CHP or FHP. Therefore, this proposal has been considered to be cost neutral.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates. The amendment would remove the requirement that a Medicaid applicant submit proof of his or her resources for purposes of determining Medicaid eligibility, if the applicant is not seeking Medicaid coverage of long-term care services. The change simplifies the documentation requirements for local departments of social services administering the Medicaid program at the county level.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment. Currently, in determining Medicaid eligibility for long-term care services, social services districts must review resource documentation.

Duplication:

The proposed regulatory amendment does not duplicate any existing State or Federal requirements.

Alternatives:

Section 366-a(2)(b) of the SSL requires that the services specifically listed in Section 367-f(1)(b) of the SSL be included in the definition of long-term care services. No alternatives were considered to the inclusion of these services in the definition.

In addition, in accordance with the authority granted in Section 367-f(1)(b) of the SSL, the proposed regulatory amendment designates a number of services as long-term care services for purposes of resource attestation: hospice care; private duty nursing; alternate level of care in a hospital; assisted living program; intermediate care facility; residential treatment facility; developmental center; the Care at Home Waiver program; the Traumatic Brain Injury Waiver program; the Office of Mental Retardation

and Developmental Disabilities Home and Community-Based Waiver program; limited licensed home care services; personal emergency response services; and the consumer directed personal assistance program. Alternatives were considered with respect to the inclusion or exclusion of particular services in this list. However, given the nature, duration, and cost of these services, as well as the fact that many of these services are delivered by the same providers who furnish the long-term care services specifically listed in SSL Section 367-f(1)(b), the Department determined that the best alternative was to require documentation of resources by applicants seeking coverage of these services.

For purposes of defining short-term rehabilitation, the Department formed a work group with representatives from local social services districts and solicited feedback from the local social services districts' provider community. It was reported that there is no durational difference between inpatient and community-based short-term rehabilitation. Therefore, the workgroup recommended that short-term rehabilitation not be defined solely by type of service. The workgroup recommended defining short-term rehabilitation as receipt of one annual episode of services lasting less than 30 days, because 30 days was the median length of stay for rehabilitation purposes according to information gathered from providers, and because this would eliminate cases that are subject to spousal impoverishment budgeting, which is not viewed as short-term care.

The workgroup recommended that alternate level of care in a hospital not be included in the definition, because the average alternate level of care stay extends beyond 30 days and because none of the providers viewed this as a short-term rehabilitation situation. Similarly, investigation by Department staff indicated that personal care services are provided to individuals who are chronically ill and require care on a long-term basis. Consequently, these services were not included in the definition of short-term rehabilitation.

Federal Standards:

The proposed regulatory amendment complies with Federal statute.

Compliance Schedule:

Social services districts will be advised of the change when the amendment becomes effective.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining Medicaid eligibility. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining eligibility for Medicaid.

Office of Homeland Security

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Homeland Security publishes a new notice of proposed rule making in the *NYS Register*.

List of hazardous and toxic chemicals

I.D. No.	Proposed	Expiration Date
HLS-21-05-00005-P	May 25, 2005	November 21, 2005

Insurance Department

NOTICE OF ADOPTION

Accelerated Payment of the Death Benefit Under a Life Insurance Policy

I.D. No. INS-35-05-00002-A

Filing No. 1372

Filing date: Nov. 17, 2005

Effective date: Dec. 7, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 41 (Regulation 143) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113, 1304, 3201, 3209, 4217 and 4517

Subject: Accelerated payment of the death benefit under a life insurance policy.

Purpose: To clarify existing regulatory language and to establish additional standards for accelerated payments of life insurance benefits in the event that the insured is chronically ill as defined by the Internal Revenue Code.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-35-05-00002-P, Issue of August 31, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prepaid Legal Services Plans

I.D. No. INS-49-05-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend Part 261 (Regulation 161) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113(a)(29), 1116; and art. 23

Subject: Prepaid legal services plans.

Purpose: To permit prepaid legal services plan to be issued or delivered on a group basis for students of a university or college.

Text of proposed rule: Section 261.5(a) is amended by adding new paragraph (8) to read as follows:

(8) A policy issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering the students of such college, school or other institution of learning.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

No person is likely to object to the proposed rule as the change is providing an additional option for insurers by permitting prepaid legal services plan to be issued or delivered on a group basis for students of a university or college.

Job Impact Statement

The proposed rule will have no impact on jobs and employment opportunities in New York State because the change is only providing an additional

option for insurers by permitting prepaid legal services plan to be issued or delivered on a group basis for students of a university or college.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Commission on Quality of Care and Advocacy for Persons with Disabilities

I.D. No. MRD-49-05-00018-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend sections 624.3, 624.5, 624.6, 624.20, 633.4, 633.9, 633.99, 676.12 and 680.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Allegation of abuse reporting and updating the proper name for the Commission on Quality of Care and Advocacy for Persons with Disabilities.

Purpose: To conform the regulation to the provisions of L. 2005, ch. 536 which change the timeframe in which a report of an allegation of abuse must be sent to the Commission on the Quality of Care and Advocacy for Persons with Disabilities and update the regulations with the new name of the commission.

Text of proposed rule: ● Paragraph 624.3(1) is amended as follows:

(1) Section 29.29 of the Mental Hygiene Law requires the compilation and analysis of incident reports in State operated facilities and the submission of aggregated information to the State Commission on Quality of Care and Advocacy for Persons with Disabilities on at least a semi-annual basis; composition of a committee to review incidents within State operated facilities is also specified.

● Paragraph 624.3(p) is amended as follows:

(p) Section 45.19 of the Mental Hygiene Law requires the prompt reporting of any allegations of abuse or mistreatment of a person receiving services to the State Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities.

● Paragraph 624.5(b)(4) is amended as follows:

(4) A written report, documented on form OMR 147(A), of any allegation of abuse is to be sent to the Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities (see glossary) within [72] 48 hours of discovery.

● Paragraph 624.6(b) is amended as follows:

(b) All deaths shall be reported to the Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities in the format as specified by the Commission.

● Paragraph 624.20(m) is amended as follows:

(m) Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities. See [Disabled] Disabilities, Commission on Quality of Care [for the Mentally] and Advocacy for Persons with.

● Paragraph 624.20(q) is amended as follows:

(q) CQCAPD. See [Disabled] Disabilities, Commission on Quality of Care [for the Mentally] and Advocacy for Persons with.

● Paragraph 624.20(u) is renumbered as (t) and is amended as follows:

[Disabled] Disabilities, Commission on Quality of Care [for the Mentally] and Advocacy for Persons with (CQCAPD). A commission, appointed by the Governor of New York State in conformance with article 45 of the Mental Hygiene Law, whose primary function is to review the organization, administration and delivery of services of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Office of Mental Health (OMH) to ensure that the quality of care provided to persons with mental disabilities [who are mentally disabled] is of a uniformly high standard. Included in this responsibility is the investigation of complaints of persons receiving services, employees, or others, of

allegations of abuse or mistreatment and the review of all deaths of persons/patients in all OMRDD and OMH operated or licensed facilities.

Note: Current subdivision (t) is renumbered as (u).

- Paragraph 633.4(a)(4)(xxiii) is amended as follows:

(xxiii) the opportunity, either personally or through parent(s), guardian(s) or correspondent (see glossary), to express without fear of reprisal grievances, concerns and suggestions to the chief executive officer of the facility; the Commissioner of OMRDD; the Commission on Quality of Care and Advocacy for Persons with Disabilities; for people in developmental centers, and in the community on conditional release from a developmental center, the Mental Hygiene Legal Service and the board of visitors; and for people in developmental centers, the ombudsman;

- Paragraph 633.4(a)(12)(iii) is amended as follows:

(iii) The Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities (see glossary).

- Paragraph 633.4(a)(12)(vi)(b) is amended as follows:

(b) Bureau of Quality Assurance
Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities
[99 Washington Avenue, Suite 1002]
[Albany, NY 12210]
401 State Street
Schenectady, New York 12305
(518) 473-4090

- Paragraph 633.4(b)(2)(iii)(c) is amended as follows:

(c) the Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities;

- Paragraph 633.9(a)(3) is amended as follows:

(3) After an allegation of child abuse that has been accepted and indicated by the New York State Child Abuse and Maltreatment Reporting Center, and investigation by the New York State Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities, it may be determined that some credible evidence of abuse exists that may be attributable in whole or in part to noncompliance by the facility with this Part of any other regulations of the commissioner applicable to the residential facility under investigation. In such an instance, the facility or the sponsoring agency shall develop and implement a plan of prevention and remediation.

- Paragraph 633.9(b)(2) is amended as follows:

(2) In the event that after an investigation of child abuse by the New York State Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities, the Child Abuse and Maltreatment Reporting Center determines that some credible evidence of abuse exists and such abuse may be attributed in whole or in part to noncompliance by the facility with this Part or any other regulations of commissioner applicable to the residential facility under investigation, the facility or the sponsoring agency developed a plan of prevention and remediation that was:

- Subdivision (v) of section 633.99 is deleted.

Note: Rest of Section is renumbered accordingly.

- Paragraph 633.99(z) is amended as follows:

(z) Commission on Quality of Care [for those with mental disabilities] and Advocacy for Person with Disabilities. A commission appointed by the Governor of New York State in conformance with article 45 of the Mental Hygiene Law, whose primary function is to review the organization, administration and delivery of services of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Office of Mental Health (OMH) to ensure that the quality of care provided to [the mentally disabled] *people with mental disabilities* is of a uniformly high standard. Included in this responsibility is the investigation of complaints of individuals, employees or others of allegations of abuse or mistreatment; investigation relative to child abuse; and the review of all deaths in all OMRDD and OMH-operated or licensed facilities.

- Paragraph 633.99(ap) is renumbered as (ao) and is amended as follows:

[Disabled] Disabilities, Commission on Quality of Care [for the Mentally] and Advocacy for Persons with. See Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities.

Note: Current subdivision (ao) is renumbered as (ap).

- Subdivision (k) of section 676.12 is deleted.

Note: Rest of Section is renumbered accordingly.

- Paragraph 676.12(dd) is amended as follows:

(dd) Recognized advocate for [the developmentally disabled person] *a person with developmental disabilities*. A person or organization recognized, appointed or otherwise authorized by a voluntary or State operated facility, program or agency, or by an appropriate court, a family physician, a primary or secondary health care facility, or by an established advocacy organization or committee such as the Mental [Health Information] *Hygiene Legal Service* [(MHIS)] (*MHLS*), Consumer Advisory Board (CAB), or the Protection and Advocacy System for Developmental Disabilities, Inc. (PASDD)[,]. Such a recognized advocate shall represent the rights, welfare and interests of the developmentally disabled person as if they were the advocate's own rights, welfare and interests. The advocate attempts to facilitate the person's access to appropriate services and programs; and works to ensure that the care provided the person with developmental disabilities for who the advocate is interested, is of the highest quality.

- Paragraph 680.4(a)(9)(iii)(r)(1)(i) is amended as follows:

(i) All alleged violations are reported within 24 hours to the administrator, the Mental [Health Information] *Hygiene Legal Service*, the commissioner, the State Office of Health Systems Management and the State Office of Protective Services for Children or the corresponding local office (if appropriate given the age of the client involved).

- Paragraph 680.4(a)(9)(iii)(r)(1)(iii) is amended as follows:

(iii) The results of each investigation shall be reported to the administrator, commissioner, the Mental [Health Information] *Hygiene Legal Service*, the Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities and the State Office of Health Systems Management within 24 hours of the report of the alleged violation.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

The primary purpose of the amendment is to conform the regulation to be consistent with Chapter 536 of the Laws of 2005 which changed the timeframe in which a report of an allegation of abuse must be sent to the Commission on Quality of Care and Advocacy for Persons with Disabilities. In addition, OMRDD is updating its regulations to reflect the new name of the Commission. With the approval of the 2005-2006 State Budget, the New York State Commission of Quality of Care for the Mentally Disabled (CQC) and the New York State Office of Advocate for Persons with Disabilities (OAPWD) were merged to form a new agency, the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). OMRDD has determined that due to the nature and purpose of the amendments no person is likely to object to the rule as written.

Job Impact Statement

A JIS for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed rule making only revises the regulation pertaining to the timeframe in which an allegation of abuse report is filed with the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). This revision complies with the change made from Chapter 536 of the Laws of 2005. In addition, OMRDD is amending its regulations to reflect the new name of CQCAPD.

Public Service Commission

NOTICE OF ADOPTION

Winter Requirements for Retail Suppliers by Central Hudson Gas & Electric Corporation

I.D. No. PSC-35-05-00015-A

Filing date: Nov. 22, 2005

Effective date: Nov. 22, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 05-M-0332 allowing Central Hudson Gas & Electric Corporation to revise its tariff schedule, P.S.C. No. 12—Gas.

Statutory authority: Public Service Law, section 66(12)

Subject: Winter requirement for retail suppliers.

Purpose: To eliminate the requirement that retail suppliers assume the company's gas supply contract associated with upstream pipeline capacity released to the retail suppliers by the company.

Substance of final rule: The Commission allowed Central Hudson Gas & Electric Corporation to eliminate the requirement that retail suppliers assume the company's gas supply contract associated with upstream pipeline capacity released to the retail suppliers by the company.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-M-0332SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The 811 Abbreviated Dialing Code by Dig Safely New York, Inc. and NYC & LI One Call/Dig Safely, Inc.

I.D. No. PSC-49-05-00019-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition jointly filed by Dig Safely New York, Inc. and NYC & LI One Call/Dig Safely, Inc. for implementation of the 811 abbreviated dialing code for providing notification of excavation activities to underground facility operators within New York State.

Statutory authority: Public Service Law, section 94(2)

Subject: Implementing the 811 abbreviated dialing code for providing notification of excavation activities to underground facility operators.

Purpose: To require telephone companies to implement the 811 abbreviated dialing code for providing notification of excavation activities to underground facility operators within New York State.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition jointly filed by Dig Safely New York, Inc. and NYC & LI One Call/Dig Safely, Inc. for implementation of the 811 abbreviated dialing code for providing notification of excavation activities to underground facility operators within New York State.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-C-1413SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by American Metering & Planning Services, Inc.

I.D. No. PSC-49-05-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by American Metering & Planning Services, Inc. to submeter electricity at 70 Washington Street Condominium, 70 Washington St., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of American Metering & Planning Services, Inc. to submeter electricity at 70 Washington St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by American Metering & Planning Services, Inc. to submeter electricity at 70 Washington Street Condominium, 70 Washington Street, New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1438SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by REHC 5, LLC

I.D. No. PSC-49-05-00021-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition filed by REHC 5, LLC to submeter electricity at 15 S. Main St., Jamestown, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1) and 67(1)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of REHC 5, LLC to submeter electricity at 15 S. Main St., Jamestown, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by REHC 5, LLC to submeter electricity at 15 South Main Street, Jamestown, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1439SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Submetering of Electricity by 505 Greenwich Condominium

I.D. No. PSC-49-05-00022-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 505 Greenwich Condominium to submeter electricity at 505 Greenwich St., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 505 Greenwich Condominium to submeter electricity at 505 Greenwich St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 505 Greenwich Condominium to submeter electricity at 505 Greenwich Street, New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1440SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Submetering of Electricity by American Metering and Planning Services, Inc.

I.D. No. PSC-49-05-00023-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition filed by American Metering and Planning Services, Inc. to submeter electricity at 164 Atlantic Ave., Brooklyn, NY.

can Metering and Planning Services, Inc. to submeter electricity at 164 Atlantic Ave., Brooklyn, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider American Metering and Planning Services, Inc.'s request to submeter electricity at 164 Atlantic Ave., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition filed by American Metering and Planning Services, Inc. to submeter electricity at 164 Atlantic Avenue, Brooklyn, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1441SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Submetering of Electricity by Sherwood 1600 Associates

I.D. No. PSC-49-05-00024-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Sherwood 1600 Associates to submeter electricity at 1600 Broadway, New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Sherwood 1600 Associates to submeter electricity at 1600 Broadway, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Sherwood 1600 Associates to submeter electricity at 1600 Broadway, New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1442SA1)

Department of Taxation and Finance

NOTICE OF ADOPTION

New York State, City of New York, and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-40-05-00024-A

Filing No. 1381

Filing date: Nov. 22, 2005

Effective date: Dec. 7, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 171.4(b)(1), 251.1(b), and 291.1(b); repeal of Appendixes 10, 10-A and 10-C; and addition of new Appendixes 10, 10-A, and 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 67(a)(1); 697(a); 1309; 1312(a); 1329(a); 1332(a); and Model Local Law, section 7 found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130; Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

Subject: New York State, City of New York and City of Yonkers withholding tables and other methods.

Purpose: To provide New York State, City of New York and City of Yonkers withholding tables and other methods and to reflect changes in supplemental withholding tax rates for wages and compensation paid on or after Jan. 1, 2006.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-40-05-00024-P, Issue of October 5, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.